S. HRG. 100-708

COMMUNICATIONS TRANSFER FEE ACT OF 1987

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1935

TO AMEND THE COMMUNICATIONS ACT OF 1934 TO PROVIDE FOR THE ASSESSMENT AND COLLECTION OF A FEE ON THE TRANSFER OF SPECTRUM LICENSES AND THE ESTABLISHMENT OF A TRUST FUND FOR PUBLIC BROADCASTING

APRIL 27, 1988

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COMMUNICATIONS TRANSFER FEE ACT OF 1987

WEDNESDAY, APRIL 27, 1988

U.S. SENATE,
SUBCOMMITTEE ON COMMUNICATIONS,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The subcommittee met at 9:45 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Tom Cohen and Toni Cook, staff counsels; and Gina Keeney, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will please come to order.

Our distinguished chairman of the subcommittee will be along momentarily. I think we could save time, not just of the committee, but more importantly these important witnesses we have, if we have our opening statements pending Senator Inouye's arrival here.

To begin with, I want to thank the Chairman, Senator Inouye, for holding today's hearing on legislation to impose a spectrum fee when a license is transferred and to create a trust fund for public broadcasting.

I brought this legislation before the Commerce Committee last year as a way to comply with the requirements of the budget resolution. You remember then President Reagan had recommended spectrum auctions, that there be a spectrum cost, and the budget approved by the United States Senate required this committee to come up with those funds in order to comply with the requirements.

We had quite a to-do. In response to my letter concerning the spectrum auction proposal, there was no support, but we found support for a transfer fee amongst all users of the spectrum.

As we considered it further, it became clear that the idea had substantial merit, in other words outside the budget process. And that is why I reintroduced it as an original bill.

And I will continue to press forward on it. If I had a nickel for every time I have said that the air waves belong to the public, I would never need another campaign contribution. I have felt the need to keep repeating it. So many people forget this fundamental fact.

Well, long ago we used this fact as the basis for the spectrum allocation scheme permitting the free use of the spectrum. In return, users would have certain public interest obligations. It is well to note historically, going back even to David Sarnoff on top of that Wanamaker Building trying to get the signals through at the sinking of the *Titanic*, and coming up into the mid-twenties when Herbert Hoover was the Secretary of Commerce.

This is the one industry or profession that came to Congress and said, for heaven's sakes, regulate us. The spectrum that they claim now is theirs was of absolute no use because of interference. It was totally jammed.

Broadcasters were begging for regulation. Hence the Act of 1934.

In all of this heat and fever about deregulation remember, it was the broadcast groups that came to the Congress asking for regulation, and not the other way around. And I am not here to change that basic premise. In fact, I am here to make sure it is upheld.

There are many out there who just want us to sell or auction the spectrum and forget about the public interest obligations. There are others who want a return to the old days, when the government imposed a panoply of regulations.

Such extreme approaches ignore modern realities. What we need to do is strike a balance. Some regulatory reform is appropriate. At the same time, the reduction in public interest obligation needs to be balanced with other ways to ensure the public receives fair value for use of its air waves.

That, after all, is the heart of the matter. That is what the chairman of the subcommittee and I have tried to achieve in our omnibus broadcasting improvements legislation and with the bill before us here today.

I believe the tradeoff as presented in S. 1935 is close to the mark in light of today's regulatory structure. The fee in my legislation will cause no licensee to pay anywhere near the full value of the spectrum. If anything, in light of all the deregulation by this runaway FCC, the fee should be greater.

Further, I have attempted to structure the fee as fairly as possible. It will not hinder entrance and the providers of new technologies. It will not harm marginal operations. It will fall on virtually all users of the spectrum, and what I propose is no different from what all of us see when we sell our home or whenever we use other Federal property, such as grazing lands or timber cutting and otherwise. We all pay the government, save and excepting in this instance.

At the same time, I am more than open to hearing of a better or a more equitable way, if there is one available. To paraphrase Lee Iacocca, if I can find a better fee I will take it.

Turning to the public broadcasting part of the legislation, it is apparent to all of us who have had to deal with funding public broadcasting that we need to find a better way to accomplish the objective. Public broadcasting was not born with a silver spoon in its mouth. In fact, it has no spoon at all.

The first Carnegie Commission recommended that the Federal government establish a long term funding plan, but it was ignored. The first meager appropriation for public broadcasting was less than ten percent of what was requested.

We in the Congress have been spoon-feeding public broadcasting ever since, and from the executive branch they have been threatening a closedown, vetoing of course our authorization bills each time.

It is time we gave public broadcasting a sound financial structure that it needs if it is to meet all the ambitious goals that we have put in its charge. This is what the trust fund is to achieve.

Those who oppose the trust fund come up with all sorts of reasons, most based on their opposition to the fee. Remove the trust fund from the bill and their opposition remains as strong.

As for those who argue against the trust fund on the merits, I believe a review of the importance of public broadcasting and the sorry history of financial support by the Federal government is all that is required to rebut their case.

The users of the spectrum should pay the American public for the right to use this public resource. One valuable way is to assist a service that we have already deemed to be in the national interest. It is that simple.

Let me yield to Senator Rockefeller, who I think was next here.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I am also very pleased that this hearing is being held on your bill, S. 1935, the Communications Transfer Act. I supported, as you know, that legislation before. It was defeated in a very highly charged and very emotional atmosphere, because we were during budget considerations. And there was also a question that was raised by some of my colleagues as to the manner or the procedural question in which it had come about, the way in which it became part of the reconciliation bill.

Well, that does not apply now because this is a hearing, this is a full and open approach. And I hope that we will now be able to discuss the bill or alternatives to it on the basis of the merits, quite apart from any other matters.

S. 1935 looks very reasonable to me. It did before and does now, because it accomplishes two of the things that I want to see accomplished in this 100th Congress, and that is deficit reduction and a stable long term source of funding for public broadcasting.

The administration has not been particularly friendly to public broadcasting. It suggested an end to it, in fact—that is, in terms of the Federal funding aspect—by 1991 or 1992.

And therefore, as Senator Hollings has said, a trust fund certainly has to be considered a way out of this funding dilemma. And it is a funding dilemma which has been holding us down for about 20 years.

I think it makes sense to capture the value of the spectrum for the betterment of a great public resource, public broadcasting. We charge for mineral rights, for grazing rights, for timbering rights, for airport landing slots.

And once again this year, the President's budget recognized the value of the spectrum and proposed the money be raised by spectrum auctions. There were a number of conversations after the last discussion of this bill on the floor in which it was as an amendment defeated, that there were other ways to do this.

And there was kind of a sense that there were going to be—people from various sides of the issue were going to get together and come up with alternative ways of doing this. Some did not like this particular way of doing it, but they agreed that public broadcasting was a national treasure and that there ought to be a way of funding it and a permanent way, and that alternatives would be sought.

So that I am assuming and hoping and anxious to hear from those who do not favor the concept within this bill what their approach would be, what they would recommend to give permanent funding of a permanent trust fund to public broadcasting, because I think there is an obligation for them to do that.

In fact, there is an obligation for them to do that. All of us agree on the importance of public broadcasting. All of us understand that every week 100 million Americans listen to it. It is watched by four out of five homes every month. There are 324 public television stations that provide the public with an incredible array of programming.

Mr. Chairman, there were approximately 1,500 hours of original broadcast programs in fiscal 1986 by PBS, for example, 50 percent of them were public affairs programs, 29 percent cultural programs, 20 percent education programs, and one-tenth of one percent sports programs. And I think that comes pretty close to 100 percent.

And I really do not know how one does a greater service to the country by those kinds of decisions.

In any event, I would suggest that the money that we spend on public broadcasting may reach more taxpayers more directly than virtually any other way that Federal money is spent on anything.

And so I look forward to the discussion this morning. The Chairman has introduced a very sound proposal that does do these twin objects of deficit reduction and long term funding for public broadcasting, and I am looking forward to hearing what people have to say.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Rockefeller.

I am going to include the full statement of our former colleague, Senator Barry Goldwater of Arizona. He says that: "I am sorry that I could not be with you today, but a longstanding commitment prevents my coming to Washington."

The important statement is:

> It is a pleasure to see that we all agree that there should be stable long term funding for public broadcasting, even if we cannot agree on how to do it. A public broadcasting trust fund idea provides precisely the kind of long range funding public broadcasting has needed so desperately for decades.

And the full statement will be included in the record.

STATEMENT OF BARRY GOLDWATER

Mr. Chairman and members of the subcommittee, I am sorry that I could not be with you today but a long-standing commitment prevents my coming to Washington. As you know, I have long been a strong supporter of public broadcasting. I take special pride in passage of the most recent public broadcasting authorization bill that takes them through 1990. This bill was finally passed over two Presidential vetoes. It is never pleasant to be forced to oppose a President from your own party—

but I believe that action demonstrates my commitment and support for the service public radio and television provide to the American people.

Twenth years ago, the Carnegie Commission proposed that public broadcasting be funded by an excise tax on TV sets, however, Congress chose not to follow this recommendation. The result is that public broadcasting has never had a steady, dependable source of financial support. Many funding schemes have been proposed since then. Now Senator Hollings has come up with a new idea—a license transfer fee on all users of the spectrum. The National Association of Broadcasters has suggested several alternative ways to finance this trust fund, including a proposal that is built upon the original Carnegie Commission idea.

It is a pleasure to see that we all agree that there should be stable, long-term funding for public broadcasting—even if we can't agre on how to do it.

A public broadcasting trust fund idea provides precisely the kind of long-range funding public broadcasting has needed so desperately for decades. Its benefits will be apparent to all Americans simply by turning on their radio and television sets. Continuation of such fine news programming as Morning Edition, all things considered and the MacNeil Lehrer Newshour as well as performance programming like performance today, American Playhouse and Great Performances is a must.

No where else do you find quality children program seen and heard on public broadcasting. Three-fourths of all families with children under the age of six watch and learn from public television. Public television serves 20 million school children and one million college and adult learners each year. Project Literacy U.S. (PLUS), and outreach campaign of ABC/PBS/NPR, has just been extended until June, 1989. The third year of the campaign is called Youth PLUS and will focus on youth literacy and a variety of problems such as drugs and high school dropouts. A recent report release by the Education Department shows that nationwide enrollment in adult education programs increased 13 percent last year while the number of volunteer tutors in such program that are federally funded increased 44 percent. The report credit PLUS for making a significant contribution to this process.

Mr. Chairman a permanent funding mechanism will allow public broadcasting to not only continue to provide existing service to the American public but provide the stable funding source necessary to extend that service to unserved and underserved audiences. The License Transfer Fee/Public Broadcasting Trust Fund is but one possible solution for a twenty year problem created when Congress passed the original legislation without a proper funding mechanism.

It is my hope that all interested parties will continue to seek a stable and permanent funding delivery system for public broadcasting. Thank you for allowing me the opportunity to express my long-standing support for public broadcasting.

The Chairman. Senator Packwood.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator Packwood. Mr. Chairman, thank you.

I am pleased the subcommittee is holding this hearing to discuss the imposition of a tax on the transfer of communications licenses. And I call this a tax on purpose, Mr. Chairman, because I am well aware the parliamentarian has referred Senator Hollings' bill to this committee and not to the Finance Committee.

Initially, given the inclusion of the fairness doctrine and the trust fund for public broadcasting, that decision does not surprise me. However, that does not change the fact that the central portion of this bill—that is, a charge on the transfer of licenses—is nothing more than a tax.

And I continue to disagree with the Chairman on this issue, but I am not going to dwell on that point any longer.

Last year's debate on the transfer fee centered around procedural concerns and we did not have the opportunity to study the proposal itself. I am hopeful that today's hearings will answer some of the questions that members have about the transfer fee and about the alternative proposals to raise revenue from the spectrum.

It is my understanding that the latest staff draft deletes the codification of the fairness doctrine and the imposition of a higher tax on broadcasters who willfully violated the fairness doctrine. In my judgment, that omission greatly increases the chance of passage of this bill.

If it is going to pass, certainly it increases the chances of the President signing it if he is going to sign it, because with the fairness doctrine in it he would not sign it and I think a veto would be sustained.

I do continue to question—and I say question; I do not mean reject—whether a tax on the transfer of licenses is the best revenue raising approach.

I am also concerned about some of the bill's other provisions, and in particular about the establishment of a trust fund for public broadcasting. But do not get me wrong. I support public broadcasting. I will support increased appropriations. I have supported increased appropriations in the past above what Administrations, Republic and Democrat, have wanted.

But I do think there are legitimate questions to be asked about what level of Federal funding is appropriate in time of tight budgets. In general, public broadcasting is immensely worthwhile, but I do object to the establishment of further trust funds, including this one for public broadcasting.

If every group that had the clout to get a trust fund enacted for its program were to succeed, we would in essence make quasi-off-budget all of the popular programs that government services.

And those that did not have enough clout, whether that be education of handicapped children or other similar programs that could not, for whatever reason, get a trust fund would bear the brunt of deficit reduction, would bear the brunt of budget decisions, because they would not have been excluded from the consideration.

And I do not think it is fair to give public broadcasting an elevated position over other obligations of government. And I might say, I have strong misgivings about many of the trust funds we have already existing in government and the elevated and preferred position that it gives to those trust funds against other obligations of government.

By earmarking more and more Federal dollars for specific purposes, we make the job of controlling spending and the deficit more difficult.

I am also concerned about providing a permanent authorization for public broadcasting at ever increasing levels. The bill we are considering today considers a formula which results in increased authorizations to public broadcasting which are not based on demonstrated need. It is impossible for us to know what the needs of this program will be five years, ten years, 20 years down the road.

And by setting authorization levels on automatic pilot—and that is what we are doing—we seem to be shrinking, in my judgment, and shirking our responsibilities to oversee public broadcasting and determine appropriate levels of funding for the program.

Mr. Chairman, I agree that licenses are valuable and that the government ought to get something back when it grants these licenses. Several options have been mentioned in addition to the Hollings proposal, and these include fees, auctions, and other methods of getting money from the use of the spectrum.

I think there is no question but what some form of tax is going to be levied on those who use the spectrum. Maybe it is the Chairman's transfer tax. Maybe it is the Administration's proposal. Maybe it is something else.

But I would say to those who are opposed to any form of tax levy, call it what you want, I think if you suggest nothing and offer nothing, then you will get whatever the Congress comes up with. And you would be better off to help us formulate a rational approach than stand back hands-off and get what you subsequently may regard as an irrational approach.

Thank you, Mr. Chairman.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE [presiding]. Thank you very much, sir.

First I would like to apologize for being here this late. But we had a very important meeting this morning.

Good morning. Today's hearing is on S. 1935, the Communications Transfer Fee Act. This legislation is authored by the Chairman of the Committee, Senator Hollings. A provision identical to S. 1935 was included by the Commerce Committee in last year's reconciliation legislation, but was removed on the Senate floor.

At the outset, it is important that everyone clearly understand the motives of myself, and I believe, the other Members of the Committee in considering this legislation. I have seen press reports and have heard conversations alleging that the purpose of this legislation is to "get" some interest group or "even some score". I can say unequivocally that is not the case. Anyone who has dealt with this Committee know that we consider legislation on its merits and that is how we have and will deal with the transfer fee/trust fund legislation. A belief to the contrary is not only wrong, but will prove unproductive.

The Committee originally approved the transfer fee/trust fund provision because we were required to do so by last year's budget resolution. Reducing the federal deficit was and continues to be the main impetus for this legislation. From discussions with other Members and from seeing the President's budget, it is clear to me that there is growing view that we should somehow capture the value of the electromagnetic spectrum for the American public. Our discussions have become increasingly focused on how this should be accomplished.

I recognize that the critics of this legislation argue that there is understanding that in exchange for receiving the spectrum for free they are required to serve the public interest. Such an argument has some merit, but it also has limits. I know that most of us on the Committee strongly believe the airwaves belong to the public and are not for sale. I can assure everyone that this legislation will not alter this concept. At the same time, if there was a direct relationship between the cost of using the spectrum and public interest obligations, spectrum licensees would then pay a more or lesser amount depending on the rules and regulations then in effect. In light of recent actions by the FCC, the cost today would be very high. I should add that the auction approach would also impose an unduly high fee.

The supporters of S. 1935, on the other hand, believe that such a high price is not reasonable and believe a more appropriate balance between a spectrum fee and public interest obligations should be formed. In other words, we should construct a scheme where there is less regulation where appropriate, but where there is a minimal fee. And the fee in S. 1935 is by any definition a minimal fee. I have done some rough calculations and found if we adopt the fee in S. 1935, it would take well over 1000 years to capture the full value of the spectrum. Consequently, the bill before us is within the proper bounds if we are to assume the critic's argument that there is some tradeoff between the cost of using the spectrum and public interest obligations.

While the main impetus for this legislation is the need to reduce the budget deficit, a second and very important motive is the need to provide public broadcasting with long term, stable funding. I have been a witness for many years to the financial instability in public broadcasting and well understand that a great deal of the fault lies with the current funding mechanism. It is virtually impossible for the public broadcasting system to engage in long term planning when it has to conduct daily drives for dollars. By creating a trust fund, we will help remedy this situation and give public broadcasting the opportunity many first envisioned for it.

Critics of S. 1935 argue that they should not have to contribute to a public broadcasting trust fund since public broadcasting is something that benefits all Americans. First, let me say to the critics that we all know that your opposition to this legislation would be just as great even if we removed the trust fund. The heart of your argument is that you do not wish to pay for use of the spectrum. Everyone here today understands that.

That, of course, does not mean that the argument of the spectrum users does not need a response. I believe it is flawed for two reasons. First, under this legislation, the spectrum users will as a matter of fact contribute to reducing the deficit because the money from general revenues that are now used to fund public broadcasting should no longer be required. Second, the public—all Americans—own the airwaves and they should be able to use any funds derived from its use for any activities they or their representatives collectively deem proper.

While I could continue to discuss this legislation for some time, I think it best to turn to the expert witnesses that will appear before us today.

I would just like to say that, while the main impetus for this legislation is the need to balance the budget, I think there is a very important other one, and that is the need to provide public broadcasting with long term stable funding.

Like most of us on this committee, we have been witnesses for many years to the financial instability in public broadcasting and can understand that a great deal of the fault lies with the current funding mechanism. I think it is virtually impossible for the public broadcasting system to engage in long term planning when it has to conduct daily drives for dollars.

It is disconcerting for many of us who support the system to have to listen in and watch these long, drawn-out fundraising telethons. But under the present system, that is the only way they can do it.

And we think that by creating the trust fund, we can help to remedy the situation and to give public broadcasting the opportunity that many of us first envisioned for it.

[The bill follows:]

100TH CONGRESS
1ST SESSION

S. 1935

To amend the Communications Act of 1934 to provide for the assessment and collection of a fee on the transfer of spectrum licenses and the establishment of a trust fund for public broadcasting.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9 (legislative day, DECEMBER 8), 1987

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Communications Act of 1934 to provide for the assessment and collection of a fee on the transfer of spectrum licenses and the establishment of a trust fund for public broadcasting.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Communications Transfer Fee Act of 1987".

TRANSFER FEE

SEC. 2. (a) Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended—

(1) in subsection (a), by striking "The" the first place it appears and inserting in lieu thereof the following: "Except as provided in subsection (g), the";

(2) in subsection (d)(2), by striking "The" and inserting in lieu thereof the following: "Except for the charges in subsection (g), the"; and

(3) by adding at the end the following:

"(g)(1) Except as provided under paragraph (2), prior to the grant of an application to transfer, assign, or otherwise dispose of a construction permit or station license pursuant to section 310(d), the Commission shall assess and collect from the person disposing of such permit or license a charge of 2 percent of the price paid by the person acquiring such permit or license or of the fair market value as established by the Commission pursuant to paragraph (4), whichever is greater, or, if the Commission finds the person disposing of a broadcast station construction permit or broadcast license has willfully violated section 315(e) during the time in which the license was held, of 3 percent of the price paid by the person acquiring such permit or license or of the fair market value as established by the Commission pursuant to paragraph (4), whichever is greater.

"(2) Prior to the grant of an application to transfer, assign or otherwise dispose of a broadcast station construction permit or a broadcast license pursuant to section 310(d), the Commission shall assess and collect from the person disposing of such permit or license a charge of 4 percent, or 5 percent if the Commission finds such person has willfully violated section 315(e) during the time the license was held, of the price paid by the person acquiring such permit or license or of the fair market value as established by the Commission pursuant to paragraph (4), whichever is greater, if the Commission finds that the station involved has not been operated on-air by the person disposing of such permit or license for more than three years unless—

"(A) the application involves only an FM translator station or FM booster station;

"(B) the application involves a pro forma assignment or transfer of control;

"(C) the person disposing of the permit or license has made an affirmative factual showing, supported by affidavits of a person or persons with personal knowledge thereof, that establishes that, due to death or disability of station principals, or unavailability of capital or other materially changed circumstances affecting such person occurring subsequent to the acquisition of the license or permit, consent by the Commission to the proposed change in control will serve the public interest, convenience and necessity; or

"(D) the disposal of the permit or license was authorized in accordance with any rule, regulation, or policy concerning the ownership of broadcast stations by minorities.

"(3) Notwithstanding subsection (e), until September 30, 1989, moneys received from the charge established under paragraphs (1) and (2) shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions under this Act and for other purposes. Thereafter, moneys received from the charge established under paragraphs (1) and (2) shall be deposited in a special account of the Treasury to be established by the Secretary of the Treasury for such purpose and to be known as 'The Public Broadcasting Trust Fund' and shall be used solely (A) by the Secretary of Commerce for the purposes set forth in section 391, and (B) for the Public Broadcasting Fund set forth in section 396(k). The spending authority described in this paragraph shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

"(4) For purposes of paragraphs (1) and (2), in establishing the fair market value of the construction permit or station license that is disposed of, the Commission shall include the price of the permit or license disposed of and all items of value disposed of with such permit or license and used in carrying out the activities for which the permit or license was granted, without regard to whether those other items of value are disposed of between the same persons or in the same transaction or transfer or assignment.

"(5) This subsection shall apply to all applications filed after the date of enactment of this subsection.".

PUBLIC BROADCASTING TRUST FUND

SEC. 2. (a) Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended by—

(1) striking out "and" after "1987"; and

(2) inserting "$36,000,000 for fiscal year 1989, and for each fiscal year beginning with fiscal year 1990, 10 percent of the amount in the Public Broadcasting Trust Fund collected pursuant to section 8(g) or $36,000,000 plus $3,000,000 multiplied by the number of years difference between the current fiscal year and 1989, whichever is greater" immediately after "1988".

(b) Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended by—

(1) striking out "and 1990" and inserting in lieu thereof "and each fiscal year beginning with fiscal year 1990";

(2) inserting "or, if greater, 90 percent of the amount in the Public Broadcasting Trust Fund collect-

ed pursuant to section 8(g), and for each fiscal year beginning with fiscal year 1991, 90 percent of the amount in the Public Broadcasting Trust Fund collected pursuant to section 8(g) or $254,000,000 plus $50,000,000 multiplied by the number of years difference between the current fiscal year and 1990, whichever is greater, except that for fiscal years 1991, 1992, 1993, 1994, and 1995 the total amount shall be increased by an additional $40,000,000 for each fiscal year to be used to replace the satellite interconnection system" immediately before the period at the end thereof.

FAIRNESS DOCTRINE

SEC. 3. (a) Section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by adding at the end the following:

"(e)(1) A broadcast licensee shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

"(2) The enforcement and application of the requirement imposed by this subsection shall be consistent with the rules and policies of the Commission in effect on January 1, 1987.".

(b) The amendment made by subparagraph (a) of this paragraph shall apply to all cases within the jurisdiction of the Federal Communications Commission on the date of enactment of this Act and shall supersede the holding and findings of the Commission in its August 6, 1987, Memorandum Opinion and Order (FCC 87-266), In re Complaint of Syracuse Peace Council against Television Station WTVH, Syracuse, New York.

Senator Inouye. I would like to call upon our first very distinguished witness, Mr. Fred Friendly, who is the Edward R. Murrow Professor Emeritus. Mr. Friendly.

STATEMENT OF FRED FRIENDLY, DIRECTOR, COLUMBIA UNIVERSITY SEMINARS ON MEDIA AND SOCIETY

Mr. Friendly. I remember you when you were a lieutenant in Italy.

Senator Inouye. That was some time ago, sir.

Mr. Friendly. We were both much younger men then.

Senator Hollings, Senator Inouye, members of the committee.

You do me honor by inviting me here. I have been in this room before for a similar purpose, 21 years ago. And President Johnson gave me one of the pens with which he signed the public broadcast bill. But on the day that McGeorge Bundy and I testified about the public broadcast bill of 1967, we were here all morning.

And at a point, I turned to Senator Pastore and I said: But Senator, you have not talked about where the money is going to come from, and that is what we have to settle before you sign off on the bill.

And he said—we are both Rhode Islanders, now, Fred, do you not trust President Johnson to do this job? And because I knew how involved President Johnson was with the Vietnam War, I started to say, no, I do not.

But as I started to say that, two hands went on my two knees. One was McGeorge Bundy telling me to shut up, and the other was David Ginsberg, who was then the lawyer for the Ford Foundation, who is here today, 21 years older. And in that instant, when I felt both those hands John Pastore rapped his gavel and the meeting was over.

Twenty-one years later, I am glad you are back here to settle the business that the committee never settled. Public broadcasting is a great vision and dream. Nobody has ever figured out how to fund it. I am glad something is going to come out of this.

When I read the Communications Transfer Act of 1987, my mind swiftly focused on a dramatic and relevant incident that occurred in 1971. The Ford Foundation, where I was then advisor on telecommunications, had determined to assist major UHF public television stations to upgrade their transmitters to the more powerful VHF signal.

It was an expensive process. In 1960, the Foundation had provided much of the funding and leadership in the purchase of Channel 13, one of New York City's seven VHF channels. We put up $6 million so that educational television, as it was then called, could operate on a frequency that would enable it to reach all the homes in the New York metropolitan area, Connecticut, and New Jersey. That acquisition is now what WNET has and it has made all the difference in creating a flagship station in New York.

In 1971 we had a similar opportunity in Los Angeles. James Loper, the President of KCET in L.A., and his board had negotiated what they considered to be a deal to acquire KTLA, Channel 5, a VHF station in Los Angeles owned by Gene Autry, the movie actor.

The price—and you might write this down—was $17 million—1971. The Ford Foundation agreed to provide $7 million and the remainder, as I recall, was to be supplied by the network-owned stations and others in Los Angeles, partly out of their desire to help public television acquire a VHF signal, but also to remove a commercial competitor.

It was analogous to three gasoline stations at a busy intersection supporting the purchase of a church or a school on the fourth corner of that intersection to eliminate a competitor.

We were so convinced that the L.A. deal for Channel 5 would be signed that I went home on a Friday evening with a check in my pocket to deliver to Mr. Autry's lawyers the following Monday.

Well, gentlemen, that check never got delivered. Over the weekend, Mr. Autry's general manager at Channel 5 convinced him to hold onto the station for another year or two in an attempt to get a larger share of the commercial market.

For all of us concerned with public television for greater Los Angeles, it was a crushing, bitter disappointment. In 1983, Mr. Autry finally gave up and sold KTLA, not to public television, not to Los Angeles ownership, and not for $17 million. He sold it to a New York conglomerate, Kohlberg, Kravis & Roberts, for $250 million. KKR, as that corporation is known, with no special experience as broadcasters and with more interest in grocery chains, insurance, and hotels, recognized a good investment when they saw it.

That is not the end of the saga. Some two years later, in 1985, KKR sold Channel 5 to the Chicago Tribune Broadcasting Company for $510 million. Imagine that. The station that public television almost acquired for $17 million had increased in value by the unbelievable amount of almost 3,000 percent.

I do not think there is any other business in the world that operates in such geometric proportions—$17 million, $510 million.

If my math is correct and if the plan in S. 1935 could have been applied to the escalated sales of KTLA, Mr. Autry would have paid the trust fund $5 million and KKR, the New York firm, would have paid at a rate of four percent, amounting to $20.4 million.

That is a total of more than $25 million that could have gone to public television and radio in Oregon, in Hawaii, in South Carolina, in West Virginia, in New York.

Now—just think of that arithmetic. What had the two owners of KTLA sold? Certainly not a half billion dollars' worth of studios and transmitter equipment, no great backlog of quality films and tapes. KTLA was never and is not now a distinguished station—not yet.

What was worth $510 million was that which has always been in short supply, a VHF television transmitter in one of the most populated and therefore richest markets in the nation.

The trafficking and profiteering is in the broadcast spectrum, in the air, in what you, Senator Hollings, call the public's air. Our friends in broadcasting do not like to refer to it as the public air, but in an industry where, as Secretary of Commerce Herbert Hoover said a long time ago, there is a limited spectrum, there will always be more who wish to broadcast than there are spots on the dial.

So the FCC, acting for the Congress of the United States, assigned frequencies on the radio dial and eventually channels on the television spectrum for a few chosen corporations to operate in the public interest, convenience, and necessity. That is in the Public Broadcast Act of 1934, as you know.

Whether they have operated that way or not is another debate for another time.

In 1988, this grand vision in the sky has become a giant money machine, where most stations have been traded many times, almost like pork bellies. In fact, billions and billions of dollars have been made in the market, where the commodity is the limited spectrum, the public's air.

It is not just the near-exclusivity of the channels, but the free delivery system that the stations are provided with, and that is often mixed. Other forms of the media—the press, newspapers, and magazines, the movies, spend much of their gross revenue printing, buying newsprint, dispatching fleets of trucks and even airplanes and trains to distribute their product. The motion picture industry, once they have a final print, must back the cost of thousands of prints that have to be trucked or flown to theaters of America.

Television and radio stations merely send their product to the transmitters. The signal goes up the tower and the stations have virtually a free delivery system. It exists no place else except in this industry.

When we the people and you our government permit these valuable stations to be traded over and over again to the highest bidders, you, we, are permitting the public franchises to be traded as if they were born into certain privileged families, theirs to own forever or to sell to any conglomerate for cash.

Can that be the ethical way to manage a scarce national resource?

Now look at the state of public broadcasting. Born in 1967, partly in this room, with lofty promises, but vastly underfunded, it is forced now to spend much of its time and energies shaking its little tin cup, begging for funds, as you said, Senator, simply to stay on the air and produce some programs worthy of the challenge.

To be candid, public television has come close to deforming itself as its managers seem forced to make up its broadcast schedules more to create a climate for tambourine shaking than for the kind of excellence in stimulating education and inspiring programming which was the original dream of this committee and Congress in 1967.

If I may say so, Mr. Chairman, you and your colleagues have welched, welched on your promise to arrange adequate funding for public broadcasting.

And to conclude—in this age of massive deficits, of course you need to be creative and imaginative. S. 1935 could be a giant step forward. If your projections are accurate, and I suspect they are, a slight fee of two or four percent every time a broadcast station is bought and sold, any time any part of the spectrum is bought and sold, could provide a trust fund for public television worth $275 million annually, just half the sum for which one station, KTLA, was sold.

Fundraising forces public broadcasting to use its scarce and privileged air to become a panhandler, which might just lose its soul in its quest to remain solvent.

I believe this bill is a giant and innovative step in the right direction. And now I look forward to answering your questions.

Senator INOUYE. Thank you very much, Mr. Friendly.

A few weeks ago one of our colleagues received public broadcasting's highest award, the Lowell Award. And at this time, I would like to call on that gentleman, the chairman of this committee, to begin the questioning.

He, incidentally, is my mentor on matters relating to communications. Fritz, it is your show.

The CHAIRMAN. I am just fascinated with your arithmetic because, Mr. Friendly, you are right on target. I practiced law. I searched titles, I worked with agents. Now let us go back.

Every time they sold, there was a five percent or greater fee to the agent, either the realtor or the agent handling that sale. The lawyer that searched that title got two percent at least. The County of Los Angeles got one percent, the registration fee.

So just at a minimum, every time they sell there are certain fees. You do not hear any Eddie Fritts running up with the National Association of Broadcasters up and down Los Angeles County and saying: Oh my gosh, what about our freedom of speech, you are going to wreck us, and all of that nonsense. They are paying it out.

They are paying out a good six percent. Five, two, one, seven—eight percent. But if you just look at a minimum of six percent, rather than the $25 million it would be about $45 million on those two transfers.

Now, everybody is getting their percent for the spectrum except the owners of the spectrum. We are the only ones dealt out of the game. The lawyers are in it, the agent's in it, the county that owns the property. They sold one in my back yard for $66 million and I know I can build it back physically and everything else like that with the personnel for $6 million. It would be a gracious plant.

That means $60 million of the $66 million is spectrum. So there is no question that everyone involved is exacting their particular interest, and should, their particular service.

But heavens above, we the general public out here that owns it, we are looked upon as taxers. They did not say taxers back ten years ago when we put in 611. We had a spectrum fee in then before the committee. They never ran around trying to get you to this committee and that committee, and it should go to Appropriations, it should go to Finance.

They play monkeyshines with you up here. They count up how many committees, and now it is a tax and that kind of nonsense.

The fact of the matter is that somehow, somewhere, there ought to be a reasonable transfer fee that is not punitive by any manner or means and helps takes care of a public trust. The President has found it necessary, even with all his deregulation, to recommend a spectrum fee. You have not touched on the non-broadcast users.

You just talk to the $250, $275 million really from broadcasters. But the others like cellular radio, for example.

Mr. FRIENDLY. I did have a reference in there to other parts of the spectrum.

The CHAIRMAN. Well, there are those others in there.

Mr. FRIENDLY. Absolutely.

The CHAIRMAN. They are all included and they all willingly say, fine, because we understand it is a public property.

I do not know if anything could be more fair, and I have yet to hear the recommendation other than get off into legalisms of whether it is a tax and in which committee it belongs and everything else of that kind people keep running around, barking, delaying and filibustering so you cannot get up any idea of to what everyone agrees.

And this is not envisioning by any manner or means that we will not be out there soliciting for public broadcasting. It is important for the local communities to still be a part of it. That has been the genius of public broadcasting, because they have taken a part. We have got such a broad range of support.

I cannot remember what my question was.

But I like a fellow who is not only named Friendly, but is friendly.

Mr. FRIENDLY. Well, you have got a pretty good system in South Carolina. I hear in between the lines of what you said a question that maybe Senator Packwood and I could have a dialogue about. We have had one, without ever meeting each other before.

And that is, I keep hearing people bring up the First Amendment in relationship to this, and I carry it with me; that is, the Constitution, given to me by Hugo Black a long time ago.

I hope nobody ever says that there is anything in the First Amendment that would prevent this kind of arrangement from being made. Senator Packwood, that is a challenge to you.

The CHAIRMAN. Thank you very much, Mr. Friendly.

Senator INOUYE. Senator Rockefeller.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Mr. Friendly, I have to—when you are talking about 1967, that causes me to think back, that at that signing ceremony at the White House with President Johnson, one of the men who sat beside him as an original member of the Corporation for Public Broadcasting was my father. And so not only my wife is involved in it, but my father was one of the original CPB directors, as he was with WNET in New York. And so I think I come at this with a lot of feeling.

Now, the broadcasters claim or tend to claim that they should not pay a spectrum license fee because of their statutory obligation to serve the public interest. And they say that they fulfill those obligations and that therefore they should not be charged a fee.

Could you comment on that?

Mr. **Friendly**. Well, as someone who worked for 16 years as an executive at a major network, I have to tell you that the battle we fought in those days to make sure we fulfilled that obligation has now become a caricature of that. I do not know anybody at any of the three major networks and very few station people who think that commercial broadcasting is operating at its optimum.

It has become, tragically, a money machine in which they have to double their profits every four years if they can, particularly the stations.

And I do not think they pay back. They welch, too. The public interest, convenience, and necessity that they are supposed to provide is now just a money machine in which, if they can push it up higher, they can get a better sale on the station when they sell it, and most of the stations have changed hands.

I do not think that is a valid reason not to make them pay what even a gas station on a superhighway pays, which is some fee for the lease of the land.

Senator **Rockefeller**. Well, let us just assume for the moment that they are right on that. Is it not pretty much the truth that, at least under this recent FCC, that a lot of those obligations have been lifted or removed from the broadcasters?

For example, the fairness doctrine, requirements for children's programming, limits on commercials, trafficking in licenses.

Mr. **Friendly**. And you remember that the last Chairman of the FCC, Mr. Fowler, said: Television is nothing more than another gadget. It is just like a toaster. Put in programs instead of bread.

Senator **Rockefeller**. But that, I mean, to me it would seem to me that that would substantially lessen the obligation. And what occurs to me is that, in light of the elimination of so many of these so-called public obligations that the broadcasters have, should they not turn around and in some way help to support public broadcasting?

Or if you reverse the point of view, why should public broadcasting, which carries all of its full responsibilities, not have the money to be able to do that? And therefore, is not it fair that, if through the transfer fee or through some other mechanism perhaps involving broadcasters, that a trust fund for permanent funding ought to be available?

Mr. **Friendly**. If that is a question, I certainly agree with it.

I said 21 years ago when I testified in this room, commercial television, of which I have been a part, makes so much money doing its worst, it cannot afford to do its best.

MacNeil-Lehrer does an hour nightly national news program, just what each of the commercial networks should be doing. But their affiliated stations will not let them do it, for money reasons.

This is a way to make that right, because public television has the air time and not the money. The networks have the money and not the air time. This is a way, to paraphrase you, to make it come out right.

Senator **Rockefeller**. You know, I have always, when looking at commercial broadcasting—and I find a lot of fault with what they do, but I have always kind of exempted news and public affairs broadcasting that they do do. And I was really profoundly upset, and I guess I have to believe it because it was so reported, that here in Washington that Channel 4 and Channel 9, two major, I guess CBS and NBC, and I forget which one it was, but in terms of their news, one of them started going much more to blood and guts.

That is, if there was an accident or if there was a rape or if there was a cocaine bust or if there was something that called for dramatic film footage, go there, get it, and it would lead the news. And it was a so-called "bleed is lead" kind of mentality.

Now, the other one, I think—I am not sure if it was Channel 9 or Channel 4. But whichever one started that, the other one resisted that because they did not want to get into it, because that is not what news broadcasting is about.

The ratings began to go down here in Washington, the most informed bedroom community in the country, more people reading, spending time reading books, watching good stuff, doing good things.

Nevertheless, the other station had to then go to the same formula, bleed is lead. And that was really the first time that the idea that even news in commercial television is subject to pressures, which they unfortunately can give in to.

Mr. FRIENDLY. All because of a ratings system which nobody believes is accurate. What an irony.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator INOUYE. Senator Packwood.

Senator PACKWOOD. Mr. Chairman, I know better than to rise to the bait when Mr. Friendly takes out the Constitution and, let us talk about the First Amendment.

Mr. FRIENDLY. I just thought I would beat you to it.

Senator PACKWOOD. But I cannot resist.

And I know the fairness doctrine is not even in the staff draft, but I cannot resist asking a few questions. I can quote it if you want the First Amendment, but I want to ask you this question——

Mr. FRIENDLY. I would like to hear you say it.

Senator PACKWOOD. "Congress shall make no law abridging"—and I am going to stop there, because it is religion, press, speech, right to assemble and petition the government for redress of grievances.

Sometimes I think that last part is overdone when all the mail comes in, but that is neither here nor there either.

The fairness doctrine is premised upon the limited spectrum and therefore the government has the right to tell broadcasters how to cover the news. They must cover it fairly, right?

Mr. FRIENDLY. There is nothing wrong with that, is there?

Senator PACKWOOD. Well, we will come to that in a minute now. I want to see what you say.

For the moment, we are not operating under the fairness doctrine. It has been thrown out by the FCC and it is in limbo right now. And Senator Hollings very wisely does not have it in this bill because it would be vetoed. And whether or not the doctrine is ever codified in another Congress and another President signs it, that is a time for another Congress.

But in any event, we are now operating without it and we will see whether or not civilization collapses because we do not have it or whether civilization manages to struggle forward with or without the fairness doctrine.

Do you think that the Federal Government—well, let me back up. Newspapers now of course print by satellite all around the country. Does the government have the right to impose the fairness doctrine on the newspaper transmission of signals because they are using the spectrum?

Mr. FRIENDLY. No, Senator. And if I may say so, I do not think that is a reasonable equation.

Senator PACKWOOD. Okay.

Mr. FRIENDLY. They do not print by satellite.

Senator PACKWOOD. Yes, they do. They send their signal up, the signal comes down.

Mr. FRIENDLY. But that does not happen to be a printing process. That happens to be a distribution of the plate process.

Senator PACKWOOD. That is correct.

Mr. FRIENDLY. It is printed, if you want to take it on the Massachusetts Turnpike, in a printing plant. And it is, rather than putting it in a truck and sending it out there, the plates, they are sent up to a satellite and down.

Senator PACKWOOD. They use a scarce spectrum to send their message.

Mr. FRIENDLY. Senator, you once asked me to testify before your committee, and that did not quite work out, for reasons you and I both remember.

I do not happen to believe that the Fairness Doctrine should go to newspapers, even though they may send out their plate, as it were, their signal, via a satellite. That is in the manufacturing process, it is not in the distribution process, and anybody can do it who wants to.

Senator PACKWOOD. Who can afford to buy it.

Mr. FRIENDLY. The difference, Senator——

Senator PACKWOOD. Everybody cannot send a signal to print their newspaper unless they can get satellite space.

Mr. FRIENDLY. And everybody does not have to. Those who do it are the "Wall Street Journal," the "New York Times," that have national services.

I let you ad lib the First Amendment. Let me just say that you do not need a satellite to print a newspaper. You cannot send out a television signal, you cannot send out a radio signal without a transmitter, and as Herbert Hoover said, in my youth, everybody who wants to broadcast cannot, and that is the difference. It is a limited spectrum. We have 580, whatever the number is VHF—I talked about that with the Gene Autry station. That gives them more power than anybody else. I have often thought about what happened at Columbia 25 years ago, Columbia University, when a student could come out, a leader of the revolutionaries at our campus, with a bullhorn, and he could say Fred Friendly is a fool, or President Cordier is a fool.

If he had a bullhorn, he had more freedom of speech than everybody else, because no one could answer, because he had the only bullhorn.

We have given 550, whatever the number is, VHF operators the greatest bullhorn in the world, and nobody else has that bullhorn, and the Fairness Doctrine, which I was told we were not going to talk about, but you brought it up—the Fairness Doctrine has not done what it was supposed to do. If you were starting from scratch, I would not write it, certainly not the way it is.

I have always felt, though, that taking the Fairness Doctrine away was sort of a mistake because it was sending out a signal to the stations, you do not have to worry about fairness anymore, but I do not want to have a fight with you about fairness.

Senator PACKWOOD. No, I do not. I just want to make sure I understand your differentiation. If it is a newspaper that sends out the signal to the satellite and down to its printing station and prints in San Francisco from their signal from New York, that is a use of the spectrum that it would be constitutionally protected, and we should not constitutionally be allowed to tell the paper what goes in the signal.

Mr. FRIENDLY. If the paper could only distribute its product to the home, as television and radio do, via the satellite, the responsibility would be the same. I think you are taking a very small part of the manufacturing of a newspaper, the way it is transmitted to a printing plant, and you are equating that to the broadcast spectrum, which is like the bullhorn at Columbia.

Senator PACKWOOD. I just wanted to know your constitutional answer.

Would the government have the right to tell the "New York Times" what they put on the signal?

Mr. FRIENDLY. No.

Senator PACKWOOD. Thank you.

Now, then, let's go to public broadcasting and the trust fund.

In your judgment, if you have a trust fund, does that put you in a privileged budgetary position over functions that do not have a trust fund?

Mr. FRIENDLY. I do not think so. We have a trust fund for roads. Are roads any more privileged than the Defense Department, than the Atomic Energy Commission, than our schools?

You seem to take the words "trust fund," I heard your opening statement, and I liked much of it—you seemed to take the words "trust fund" as if they were some kind of dirty words.

Senator PACKWOOD. No. It is a privileged position.

Mr. FRIENDLY. I do not see where it is privileged.

Senator PACKWOOD. Well, in that case, why do you——

Mr. FRIENDLY. Because you can always take the trust fund away, just as you can always take the appropriation away.

Senator PACKWOOD. Well, we can always take the trust fund away, but it takes a positive act of legislation to take it away and signed by the President to take it away, whereas if you are dependent upon appropriations, you only get your money if we pass the appropriations and the President signs them.

It is certainly a different onus.

Mr. FRIENDLY. Yes, but I will tell you what I do not like, Senator Packwood, and my grandfather was Mayor of Eugene.

Senator PACKWOOD. It is a wonderful town.

Mr. **Friendly**. Friendly Hall is still there. It is irrelevant to what I am going to say, but I could not escape saying it.

I think the idea of having Congress pass appropriations for public television, some of the best programming there is, is really more of a violation of the First Amendment than anything you have talked about because I do not want, and I never did want 21 years ago, 10 years ago, 5 years ago, tomorrow, Senators—and I vote for two of them—I do not want Senators appropriating money for something that is so vulnerable to censorship as the news that the American people see.

So I think the trust fund takes us past some of the First Amendment problems that keep you and me awake at night.

Senator **Packwood**. You are amazing. You do not want Congress to vote for the money for the news that you and I see, but you do not mind the Federal Government saying what the broadcaster shall say in the news, look over his shoulder and saying "I do not like the way you covered that." That does not bother you.

Mr. **Friendly**. You just put, Senator, you just put some words in my mouth that I have to spit out, with all due respect. You said and you want to put the ability of the Congress to do this—I never said anything like that. I would like to keep you and your kind completely out of the process.

Senator **Packwood**. Boy, so would I.

Mr. **Friendly**. Good.

Senator **Packwood**. So would I.

Mr. **Friendly**. But you are not going to do that by starving Public Television, and that is what you have done. You have created an illegitimate child. In this room you said we are going to have Public Television, and then like someone with a child it did not like, you have disinherited it, and you have made him into a begging pauper, an orphan, and if that does not make you ashamed, then the First Amendment should not.

Senator **Packwood**. I want to know—and I think now I understand your distinction when you are talking about a trust fund for Public Broadcasting, as opposed to handicapped children or Defense—what you are saying is that the putting out of the news, although Public Broadcasting does lots of other things in addition to news, and does them well——

Mr. **Friendly**. That is right.

Senator **Packwood**. As a matter of fact, I do not watch much television, but most of what I do watch is public television.

Mr. **Friendly**. Good.

Senator **Packwood**. But you were saying——

Mr. **Friendly**. I hope you send in money for it.

Senator **Packwood**. As a matter of fact, I do.

I am a consistent supporter of WETA here, and I send them in money and get their program guide, and I think it is a wonderful station.

Now, then, what you were saying is that what public broadcasting does is so important or possibly, if regulated by government can be so dangerous—I do not want to put words in your mouth, but you do not want us interfering with their news.

Mr. **Friendly**. I do not want you in the news room.

Senator PACKWOOD. Okay. That is the justification for the trust fund? I'm not quite sure what you are saying.

Mr. FRIENDLY. I am saying that the trust fund is important because for 21 years you, the government of We, the People, have demonstrated through five Presidents, Lyndon Johnson, Richard Nixon, who wanted to destroy it, President Ford, President Carter, President Reagan, all of those Presidents and all of you Members in Congress have not thought that Public Television had a high enough priority to protect it by giving it insulated funding.

I want it insulated.

Senator PACKWOOD. I understand that.

Then what I want to know, because in this sense, public broadcasting is no different from the Children's Defense Fund or any other group that will come in and say, "For 20 years this government has starved the education of handicapped children, for 20 years we have starved dot, dot, dot," depending upon what group is testifying, "for 20 years the priorities of this country have been wrong."

What distinguishes public broadcasting from the pleas of other groups that have legitimate wants that also would like to be protected in the same fashion? What is the standard that we take to say public broadcasting is entitled to a higher preference?

Now, your argument is we have not given it enough money. The other groups would say we have not given them enough money.

Mr. FRIENDLY. That is not what I am saying, Senator.

Senator PACKWOOD. Well, I thought—what are you saying? You are saying we did not give public broadcasting enough money.

Mr. FRIENDLY. What I am saying is that you created a child which has grown almost to manhood, except it cannot get along, but at the same time you have kept into place a commercial broadcast system that is not doing its job. It is not like the Children's Fund. There is a commercial system which I was once a part of, I was proud of it then, I am still sort of proud of it, and this commercial system sops up the channels, sops up the energies, is a system in place unlike the Children's Fund and anything else, and it dominates the spectrum, dominates the air, dictates—sets the national agenda, does not do a very good job—it hurts me to say that—and that is why you need, and I would think you above all, there is no one who thinks more about the First Amendment in the Congress than you do, although others may—I would think that you would want to—I did not invent the words "trust fund." That is a word that came out of the parliamentarian Members of Congress as the best way to do it.

All I want to see you do is insulate it. I once had a debate in a room just like this down the hall with Senator Strom Thurmond in which the roles were all reversed. But I remember in the early days of public television, Congress would vote or not vote on what they saw on the air. They did not like this, it was too left wing or too right wing, or too inflammatory. I do not hear that anymore. Everybody accepts public television for what it is.

But I think we do not know who is going to be in Congress, we do not know who is going to be in the White House, to leave public television to the impulses of Members of Congress and the Presidents with their veto. If you do not want to have a trust fund, then set up some other kind of insulated process by which to do it.

I do not want you to catch me in the defense of the Children's Fund, which I think is all right. What I am saying is because you have given away the spectrum—your predecessors have given away the spectrum to commercial broadcasters, you have to do something to keep public broadcasting, television and radio, viable.

Senator PACKWOOD. Let me ask you a last question, then.

As you are well aware, although we set up a trust fund, if we do, we still appropriate the money, and the same with highways and airports, and this is why trust funds build up surpluses, we do not spend as much as the money comes in, would you prefer that in this particular case we remove the trust fund from even appropriation and the money would come in from whatever levy we choose, go directly to the Corporation for Public Broadcasting, and Congress not touch it at all or appropriate it at all, make it totally removed from any connection with Congress, short of changing the statute?

Mr. FRIENDLY. I would want to think about that, and I will be glad to write you a letter.

Senator PACKWOOD. I hope you do.

Mr. FRIENDLY. It sounds like an interesting idea.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Senator Kerry?

Senator KERRY. Mr. Chairman, I have been listening with great interest, obviously.

I certainly think there are some distinctions, as I listen, as verse to Senator Packwood, I think, but we have a trust fund, obviously, in highways, which comes from gasoline; we have a trust fund in Social Security, it comes from payroll tax. We have a trust fund for the airports that comes from fees in use of airports.

I think it has always been a notion that where there is a public interest and a nexus between a particular undertaking and a goal we have been willing to dedicate trust funds. And it seems to me certainly—and we are not here to debate this, and I do not want to take time now, but it seems to me that it is totally consistent with past efforts of the Congress to try to separate itself from continual funding choices, and perhaps even very consistent with the First Amendment in terms of removing us from, as Mr. Friendly said, the whole question of making choices that may be linked to content, substance, product and other things, that if there is a trust fund, we are somehow removed from that.

But I would just like to ask Mr. Friendly if he would comment perhaps on the distinction between another notion that has floated around, which is the question of auctions as opposed to a transfer fee.

I wonder if you would just comment on how you separate the benefits and minuses of those?

Mr. FRIENDLY. Well, Henry Geller, who has pioneered a lot of the legislation in the last 20 years, is here and will testify later. It has always been his idea, sort of in frustration that there would be an auction, and that you would auction off these franchises.

I have never quite understood how you do that because you have people who now have spent in your city, in Boston, Channel 5, a better station, $320 million I think for a station. What are you going to do with those people? They have bought it. I suppose you can say in five years you will have made enough profit that we will take it back and then auction it off. I do not quite see how you do that.

I would not object to the auction if you could figure out what you were going to do with people who own billion dollar enterprises.

The only problem I see in auctioning off stations is when you auction them off and then you take that money to fund public broadcasting. I presume, you are really saying to Channel 5 in Boston or Channel 11 in New York, all right, you paid for it. You have auctioned it off. You do not have to do anything. We have gotten rid of the Fairness Doctrine. You are free to do your worst, and we will take the money you have given us and let public television do their best.

I am a little nervous about auctioning a station off for that reason because I think many of the people who pay these big prices will say, well, we paid for it. Now we can do anything we damned please. They almost do that now. But they still have to worry about the FCC when there is an FCC.

Senator Kerry. Is there not a distinction also, in the argument that was being made by Senator Packwood, about the "New York Times" or someone beaming their data up and then it being collected and printed—is the distinction not that there are also many other means of transmission available, i.e., fiber optics, telephone lines, etc., and that there is not a limited access or limited audience, whereas in broadcast there is a limit, and it is precisely that limit and cheap availability to many, many, many homes that distinguishes both the value as well as the access, which in effect is a fundamental difference in whether or not you ought to be making one available under some terms, or under the First Amendment, and others are not.

Is that distinction valid?

Mr. Friendly. I think it is a very big distinction. I think that cable and cassettes, satellites, may change broadcasting a great deal. I hope they do. But I think those three or five or seven VHF television stations in the bigger markets are the way for the next 20 years that most Americans are going to get their picture of reality, and I think that that picture of reality is something you ought to concentrate on.

My mother used to say to me, son, what you do not know cannot hurt you. I think what we as Americans do not know about deficit funding, what we do not know about arms control, what we do not know about road programs, what we do not know about our bridges and construction could kill us. And I think that most Americans get their news from television—and I just do not mean news, Senator. I am also talking about plays that educate and teach us, via television, via VHF television, and not to worry about that is not to worry about the chief way in which we get our news and information and/or picture of reality.

I think more people get their news, their sense of history, their entertainment—programs about the Civil War, programs about

April Morning that I saw the other night—via television, via radio. That is very special, and we have given that to just a few people to run. And we cannot take our eyes off that problem. If you are in Hawaii, as I am often, you and I shared a platform together once, Senator—I know that in a state that far away from Washington, your picture of reality of what is happening in Washington comes from those VHF television stations out there. It is, if not a fourth branch of government, it certainly is ancillary to it. And it is something we had better worry about.

There is no excuse for the station in your town, in Boston, for doing a 22 minute national news program when it ought to be doing an hour program, and the only reason it is not is money, exorbitant profits. And you have to worry about that.

Senator KERRY. Is there a problem down the road—last question, I think. I have been reading lately that increasingly the network programs, particularly the evening shows, are less watched, and there seems to be increasing incursion, as you have mentioned, both by cable as well as by cassette, et cetera.

If ten years down the road, 15 years down the road, it appears that there has been a major incursion by cable, et cetera, and so the VHFs are suddenly less important, are we on the same philosophical ground here, or are we then looking for some kind of tax, because cable is now outside the FCC, et cetera, are we looking for some—are we really talking about the communicative power here rather than the VHF stations, per se, and do you at some time in the future therefore have to think about looking to a transfer tax or some kind of funding that comes from those more powerful entities, if and when they become more powerful?

Mr. FRIENDLY. First, I am not sure that anything will ever take the place of VHF, although I could be wrong. I do think the difference is that over-the-air broadcasting is limited spectrum space. As Herbert Hoover said, there will always be more people who wish to broadcast than we can accommodate.

In cable, in cassettes, it is unlimited. There is no First Amendment problem in it. You can have as many people who want to broadcast, who have the money to do it——

Senator KERRY. Could you repeat that? I did not hear what you said.

Mr. FRIENDLY. Yes.

Senator KERRY. Cable is unlimited?

Mr. FRIENDLY. Cable has the potential—I wrote the plan with other members of the Commission for New York City 20 years ago. You can have 50 channels, you can have 100 channels, you can have 200 channels, and with fiber optics, God knows what you can have.

The only problem is you cannot broadcast if you do not have enough money. But I would not want to license any of those channels because I think that that is unlimited spectrum space, and I think that would be violative of the First Amendment. I think there is no reason a city could not get 5 percent of whatever the cable system costs because they are using city streets. It may not always be that way.

I am not so worried about it. If there were unlimited VHF stations, you know Britain, which has one of the best broadcast systems in the world—there is a great book to be written about the British system versus our system. That is what I ought to be doing with my life—but in Britain they do not have VHF.

Senator Packwood, I want you to hear those words. In Britain they do not have VHF. Everything is UHF. So they can have more channels, and they have added more networks and more channels as they have gone along. VHF was a trick played by RCA a long time ago to limit the amount of stations, with all due respect to David Sarnoff. He wanted there to be limited stations. And because RCA not only ran NBC, a major network, but also manufactured the sets, they wanted to have limited spectrum space. Therefore, VHF, not UHF.

Our whole system could have been UHF, and we would not be having this big argument because we would have almost unlimited spectrum space in the communities.

But we did not go that way. So I do not think that is a problem, Senator. I think the problem is, it is really a reverse of the First Amendment. You could argue that when you give three stations in Portland, Oregon, or four, the only Vs, you are in fact breaching the First Amendment because you are saying to those four people, you have freedom of speech and freedom to broadcast, and to all others, shut up or go genuflect to those people and get yourself on the air.

So one could make the argument that limited spectrum space that comes out of VHF, and many public television stations, 40 percent of them, maybe more, do not have a V, that is almost violative of the First Amendment, and I think that the new world of cable and cassettes will change that.

I do not believe—I would like to say this for the record—that although the audience for VHF may be shrinking, it really does not matter. It is still a great monopoly that you have given to some and denied to others. And as the beneficiary of that for many years of my life when I was a commercial broadcaster, I understand that perhaps better than anybody.

Senator **Inouye**. Senator McCain.

Senator **McCain**. No questions, Mr. Chairman.

Senator **Inouye**. Senator Pressler.

Senator **Pressler**. Well, let me just get your reaction in general real briefly. I think a lot of the questions have been asked, but since we have had this period of deregulation there have been changes in broadcasting in this country. And I am a strong supporter of public broadcasting.

Some TV stations I think are doing more and better. For example, in my state of South Dakota, in Sioux Falls, KALO-TV I think is doing more public service since deregulation. I think they are continuing that tradition.

But across the country, in some areas, and usually areas where there is not a lot of competition—it could be upstate New York or parts of California or Wyoming or South Dakota or wherever—I see stations being bought and sold quickly, transferred.

And they are sort of made hollow shells. I mean, maybe their news room is cut down. The things that cost money—and this does not happen in the big competitive markets.

Mr. **Friendly**. It happens everywhere, Senator. In the big markets, too.

Senator **Pressler**. But it has happened especially in the small radio stations and TV stations around the country. And now, maybe people do not want to hear that much news or weather, but I think they do.

And there has been a very serious lack of responsibility on the part of some people owning those stations in my judgment since deregulation. And I say it as one who voted for deregulation.

I have been disappointed in many areas, and that is why when we come to talking about a transfer fee or something, if we are not going to have a three year rule or a five year rule, we are going to have to return to something, unless there is more public responsibility in my view.

Do you generally share that? And of course, you have expressed that.

Mr. **Friendly**. I do, sir. And I think that we the people and you the Congress have got to take a long hard look at deregulation. You go to an airport and you are not sure that deregulation has worked there. You pick up a telephone and you are not sure that deregulation has worked there.

Deregulation in a limited spectrum access system seems like an oxymoron. I do not know how you regulate—how you deregulate something where you have regulated a system where only three people can have the facility. You have not deregulated broadcasting.

Deregulating over the air broadcasting sounds like an oxymoron to me. How can you deregulate something where you have regulated that only three people or five people can have a transmitter? It is a contradiction in terms.

And I think you have an awesome responsibility. I think you had it—I am so old, Senator, I can remember when there was no radio, when there was no television. And I have watched it go from a great dream to something where the turnover is enormous. Some stations have changed hands 20 times.

And I am not sure that we have deregulation. I think we have gotten rid of the best parts of regulation and kept the part that keeps it a quasi-monopoly. I agree with you.

OPENING STATEMENT BY SENATOR PRESSLER

Senator **Pressler**. Thank you.

Mr. Chairman, I have a statement for the record.

Thank you, Mr. Chairman, for scheduling today's hearing on the Communications Transfer Fee Act of 1987. The issue of long term stable funding for public broadcasting is an important one and deserves to be discussed.

The proposal before us is not a new one, however. The same proposal was introduced last year, creating a trust fund using the same source of financing, a transfer fee on broadcast licenses. The only real difference is that it does not make any attempt to codify the fairness doctrine.

Perhaps more members will support this legislation now that the fairness doctrine has been removed. That is not why I opposed this measure last year, however. I opposed it because I objected to using a spectrum tax as the funding source. That is simply the wrong way to finance such a trust fund.

I must point out that I do not oppose a trust fund for public broadcasting. In fact, I am a strong supporter of public broadcasting and would like to see a trust fund instituted as a source of long term stable funding. But we need to have a more appropriate source for that funding. I ask the witnesses who will appear before us this morning to suggest alternative sources.

Until we come up with a really good source for a trust fund, the current system will have to do. And it's not that bad. We do authorize funding three years in advance, giving public broadcasting some ability to plan ahead. Thus we have the time and the responsibility to ensure that we choose the right method of funding for a public broadcasting trust fund.

Mr. Chairman, this is a worthwhile goal, but this is not the proper method of achieving it. I hope we can explore some other options this morning. Thank you.

Senator INOUYE. Chairman Hollings has just observed that this has been the most provocative and most interesting hearing that this Communications Subcommittee has held in maybe a decade. And for that, we thank you very much.

Senator PACKWOOD. Could I ask two more questions?

Senator INOUYE. Certainly.

Senator PACKWOOD. During one of the past campaigns, my campaign for re-election, not the last one but before, I had an AP wire service in my home, because I would get up in the morning and want to see what was going on. And I could have had UP and in the old days INS. But it was worthwhile for four or five months to have it.

Clearly, the government cannot regulate what AP sends out because they are using the wire. And you indicated earlier you did not think they could regulate cable, either.

Mr. FRIENDLY. Right.

Senator PACKWOOD. They couldn't regulate cable television, because it is using the wire. You would disagree with the Supreme Court's decision that has said we can regulate cable?

Mr. FRIENDLY. The Supreme Court and I have had a lover's quarrel for 200 years.

Senator PACKWOOD. But your position is you cannot regulate what goes out on the cable television? Content doctrines, fairness doctrine; if I receive my television via the cable, it should not be able to be regulated?

Mr. FRIENDLY. You are stretching my words. You are taking the word "regulation," and you and I have a different meaning of the word "regulation."

What I am saying is that that which has limited access——

Senator PACKWOOD. But you said there is no limited access on cable.

Mr. FRIENDLY. There is none, and I do not think that anybody should regulate anything where there is unlimited access, whether it be newspapers, magazines, cable, as long as it remains that anyone who wants to use a printing press—and I worry. When I was growing up, there were 15 papers my father could send me out to buy in New York. Now there are two and a half.

Senator **Packwood**. Would you care to identify the half?

Mr. **Friendly**. You and I will have a little private talk later.

And by the way, when I was seven years old my father could send me out to buy one of 15 papers on 520 110th Street. The "New York Times" cost a penny, and I tell my friends at "The Times" it was worth every penny.

Now it costs 30, 35 cents.

I think—I do not like the fact that 95 percent of our cities, including Honolulu, have one newspaper, or two newspapers owned by the same family, or two newspapers printed and advertising done in the same place.

I think what we intended when we wrote the First Amendment two years after the Constitution was written, that there would be a lot of little print shops, a lot of little pamphleteers. In Philadelphia there would be 20, 30, 40; in Boston, 50, 60, 70.

I do not think they ever dreamed that there would be one newspaper in a town or two newspapers. And I think that is something that makes me very nervous.

Senator **Packwood**. A lot of pamphleteers, Mr. Friendly, but at the time that First Amendment was written eight daily newspapers in the entire country. That was scarcity, and our founders knew that it was scarce and they still protected it.

Mr. **Friendly**. And God bless them. But I do not think that is relevant to what we are talking about, if I may respectfully say that.

What I am saying is, you asked me about regulation of cable and cassettes and newspapers. I do not see any reason to do that, although I am sad that there is only one newspaper in many towns.

Senator **Packwood**. As you are well aware, the decision to put a signal on the air is a local broadcaster's decision. And in Portland, when the Portland Trailblazers play a ballgame that signal preempts something else that must go on someplace else in this country on that night. And the local station that gets the bid to broadcast those Trailblazers games kicks off whatever may show everyplace else.

If that broadcaster is sending that signal, whether it is the Trailblazers game or the national news, by cable—he receives it just like the "New York Times" receives it. He receives his signal through the spectrum. He sends it to the home by cable, and you are saying that should not be regulated.

Mr. **Friendly**. Senator, of course not. But if it was all by cable, that station—and you have a very good one in Portland—that station owned by the King Broadcasting, that station, if it was not cable—and maybe it all should be in cable. Maybe we should get rid of VHF, and maybe that is the answer.

If it was all by cable, that station could have three or four channels, so they could send out your beloved Trailblazers and my New York Knickerbockers on channel B, channel C, channel K, channel 9.

I hate it when they preempt themselves for ice hockey or whatever.

Senator Packwood. You and I agree, cable should not be regulated.

Mr. Friendly. That is right.

Senator Packwood. Okay, good.

Mr. Friendly. But that—you are almost making our colleagues infer that I mean that television should be regulated. I never said that. I said it should be treated as something very special, and that is why I would not have written the fairness doctrine.

By the way, the fairness doctrine that keeps you awake at night does not bother me. All it says, you will do programs of a controversial nature, of public importance, and you will do them fairly.

Senator Packwood. I will make you this bet——

Mr. Friendly. What is wrong with saying that? Answer my question, Senator.

Senator Packwood. I would be happy to spend the rest of this morning on that subject. But I will make you this bet: Within the decade, most of the homes in this country will receive their television signal by wire, rather than over the air.

And at that stage, when they are receiving it by cable, you then have a serious question about regulation, as to whether or not it is constitutional.

Mr. Friendly. You and I could have a long evening about that, and when did you say that would all happen?

Senator Packwood. Within the decade.

Mr. Friendly. Senator, sometimes each of us are wrong.

Senator Inouye. Senator Rockefeller.

Senator Rockefeller. Just a philosophical question, Mr. Friendly.

Mr. Friendly. I thought this was all philosophical.

Senator Rockefeller. The question of serving the public interest as the obligation of commercial broadcasting, and then going back to what I mentioned before, to bleed is to lead, and therefore ratings and the power of ratings on decisionmaking in commercial broadcasting.

And sometimes commercial broadcast people will say, we give the people—we put out for the people what they want. Now, that is interesting, because do you put out what they want or do you shape them to perceive what they want? And then public television and public radio is so different, so that is that what the people do not want?

Why is there such a difference philosophically? You understand what I am saying?

Mr. Friendly. I understand your question. It is a very good question, and I think that everything—everybody does not have to have a rating of 18 points. And let me say, ratings are the most inaccurate things in the world. Nobody believes in them completely.

It is like measuring space age tolerance with the precision of a dipstick in a Model T Ford. It will tell you whether anybody is watching or nobody is watching. But when the three networks quarrel over who is in first place and Rather has a 13.4 and NBC has a 13.2 and ABC has a 13 even and somebody says, network X is in first place, that is ridiculous to the point of being obscene.

Ratings, I wish we did not have this ratings system or I wish we had a system that told us something better and more accurately.

And the broadcasters are coming to that point now. They do not suddenly like their ratings system.

Senator, we create appetites. You can create an appetite for junk food, and we have in this country. And I do not think it is very nutritional. We can create an appetite for junk news, and we are beginning to do that, and for junk entertainment, and I do not think that is very healthy.

Or you can create an appetite for serious drama. BBC does 500 new hours of original drama every year. We do virtually none on commercial television. I do not count those movies that you see on television as serious new creative theater.

You create appetites, and I think you can create an appetite for hamburgers that are frozen and cooked, or you can create an appetite for more nourishing food. And you can create an appetite, and that is what the broadcasters in my day, when I was alive, did.

I will end with one brief anecdote, forgive me. 1959 and 1960, there were the quiz scandals. You remember the quiz scandals. Frank Stanton sat, if not in this room, in a similar room and apologized and said, it is our fault, we did it, and it will never happen again.

And then he said, because the networks were scared they were going to lose their franchises, their stations. He was a fine man and he said: I promise you, the Senate and the FCC and the American people, that we will mend our ways. My words, not necessarily his exact words.

And then he said: We are going to create a documentary, which had gone out by then—1960—once a month, then every other week, then once a week, to make up for all of this. And that is how CBS Reports and NBC White Papers were invented, making up for something, scared of what the Congress and the FCC might do.

And now CBS Reports are gone because you have not paid enough attention. You have let them take that word "deregulate" and make them think they do not have to do that.

If you would just treat them as something more than a toaster and let them know that you are watching and caring, and that although you are not in the content business, you might come back to what scared the hell out of them during the quiz scandals.

Perhaps we need another set of quiz scandals, and I say that with some sarcasm.

The CHAIRMAN. And how do we scare them?

Mr. FRIENDLY. By paying attention.

The CHAIRMAN. All right, I want to pay attention. What should I be doing? I have been trying to get through a spectrum fee.

Mr. FRIENDLY. Senator, I am trying to get out of here.

The CHAIRMAN. And I am trying to help you, because Senator Inouye has got those witnesses backed up.

Mr. FRIENDLY. It will just take me 30 seconds and then I am through.

The CHAIRMAN. But now I am on Packwood's side. How do I constitutionally scare them?

Mr. FRIENDLY. There was a station—the quiz scandals is one answer, just by breathing down their neck: Could you have allowed this to happen?

The scandals going on in broadcasting are just as bad as the quiz scandals, although they are of a different nature. WLBT, Jackson, Mississippi, the only station in Jackson, an NBC station, affiliated. They never let Martin Luther King on their air. When Thurgood Marshall prosecuted Brown versus School Board and was on the Today Show, they blacked it out and said "Line trouble from New York."

Eventually, a group came along, a church group, and financed an appeal by the black people and the other people who cared in Jackson, and they took it—they went to the FCC. It did not have the guts to act. Eventually the court, the United States Federal Appeals Court of Warren Burger, took that license away.

One station lost its license. The industry changed for a few years because they did not want to lose their stations. That was an abject, terrible thing that WLBT did. But you cannot go on letting the public airways be raped—and I do not use that word loosely—by people who do not give a damn about content, but as you said, Senator McCain, care only about what they can sell that station for in two or three years.

That is not what you the Congress created the electromagnetic spectrum for. And if that is regulation, then make the most of it, but I do not think it is.

The CHAIRMAN. Thank you, Mr. Chairman.

Thank you very much.

Mr. FRIENDLY. Thank you, gentlemen.

Senator INOUYE. Senator Hollings has just advised me that if the committee could pay honoraria we would be paying you.

Mr. FRIENDLY. Senator, I would not accept it.

Thank you very much.

Senator INOUYE. But you deserve it.

Mr. FRIENDLY. I am available any time, day or night, especially to you, Senator Packwood.

Senator INOUYE. Now I have a question. May I ask one, sir?

Mr. FRIENDLY. Yes, sir.

Senator INOUYE. Those who oppose this measure have suggested that both public and commercial broadcasters vie for the same audience, and to require the commercial broadcasters to support the public broadcasters is unfair competition.

What do you have to say to that?

Mr. FRIENDLY. How can companies that make 40 to 60 percent profit on their net and gross—in other words, the average commercial station, the successful ones, and they are all successful, make 40 to 60 percent. That is a lot of money.

That is more money than the pharmaceutical industry earns. That is more money than the racehorse business. There are enormous profits because it costs them nothing to deliver the product.

And then they sell their stations for 3,000 percent profits.

We give some 50 cents per citizen to public television. The BBC, the French television, the Italian television, give four or five dollars per person to their systems. To say that this is unfair to them is like saying to the richest man on the hill, it is unfair for us to tax you to help the poor. It does not make any sense, Senator, and I do not think you believe it.

Senator INOUYE. In order to make the record correct, the Federal contribution is 77 cents per person in the United States, $13.98 in Japan, $24.52 in the U.K., and $23.01 in Canada.

Mr. FRIENDLY. I thank you for correcting me.

Does that not make you ashamed?

Senator INOUYE. Yes, sir.

Mr. FRIENDLY. Am I excused?

Senator INOUYE. On that note, I thank you very much, sir.

Mr. FRIENDLY. Thank you for letting me be here. It means a lot to me.

Senator INOUYE. Thank you.

Our next witness is the Assistant Secretary for Communications and Information, the Honorable Alfred C. Sikes.

Before proceeding, I have a letter from Mr. Newton Minow and, without objection, that letter will be made a part of the record.

Mr. Sikes, welcome.

STATEMENT OF ALFRED C. SIKES, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

Mr. SIKES. Thank you, Mr. Chairman.

This is, as Mr. Friendly's testimony has indicated and as the panel's questions indicated, a very important subject. And I thank you very much, Mr. Chairman, for holding this hearing and for giving me the opportunity to testify.

I would like to begin with my formal testimony, and then I have just a few comments to make about Mr. Friendly's testimony at the conclusion of my formal testimony. I would like to indicate that I have submitted a fuller set of remarks for the record and I am now going to deliver a much scaled down version.

The CHAIRMAN [presiding]. The fuller remarks will be included in the record. You may highlight it as you wish.

Mr. SIKES. Thank you very much.

It is my understanding that the essential purpose behind the Communications Transfer Fee Act of 1987 is to raise revenue from people that hold the license to use a particular frequency and decide to sell that right. Since the radio spectrum is public property, I understand the interest and I certainly share, Senator Hollings, some of the same concerns that you have.

The central difficulty with S. 1935, however, is that it is impossible to separate the value of the frequency and the value added by the hard work of individuals. As a former broadcaster and licensee of frequencies, I would like to elaborate on that point.

And I might say that, unlike Mr. Friendly, who spoke from the lofty position of CBS and the lofty position of VHF television stations, maybe I should indicate that I am speaking for radio station owners and for independent UHF stations, which I suspect he would find to be dramatically different than what he had earlier outlined.

The right to hold and transfer radio spectrum is worth far less than a successful communications business. Many broadcasters, for example, buy underdeveloped properties at close to their spectrum value and sell them some years later after appreciably improving their programming, the audience share, and thus the advertising revenue.

The revenues exacted under S. 1935 would come principally in my view from the added value.

Additionally, Mr. Chairman, many of the most valuable frequencies are held by large companies. They help form the core of their infrastructure and are rarely transferred. Telephone companies, for example, rarely transfer microwave or mobile frequencies.

In summary, Mr. Chairman, the administration would oppose S. 1935, as it would exact a fee or tax where there was a gain or loss, and in the broadcast service impose a significant part of that burden on the results of good work. In fact, in some instances this gross receipts fee or tax would be greater than the capital gains tax, which is now of course the same as the ordinary income tax.

Since this is primarily a measure to raise money, I would respectfully suggest, Mr. Chairman, that there is, using the underlying rationale for this legislation, a fairer way to accomplish the goal. The Spectrum Assignment Improvements Act of 1988 proposed by the administration is intended to benefit the public through the use of value-based assignments.

The act would speed up the provision of new services, protect the public's property right in the spectrum, and provide significant new revenues to the United States Treasury. It is also not in direct conflict with S. 1935 and we believe should be enacted regardless of what action is taken on S. 1935.

The FCC currently has two means of assigning licenses, comparative hearings and in some instances, lotteries. These procedures, especially comparative hearings, are slow and expensive, and these trouble-filled procedures often do not determine who will ultimately be using the spectrum to serve the public.

Under the proposal, competitive bidding would be used only for currently unassigned spectrum. And let me emphasize that it could not be used for mass media, public safety, or amateur radio services.

The FCC would be authorized to use the competitive bidding process only in the assignment of licenses in the remaining unassigned six megahertz in the UHF band. Mobile services are compatible with these bands.

The FCC could use competitive bidding if there were mutually exclusive applications. In such a case, the FCC would make the highest bidder the tentative licensee. The Commission could not award a license, however, until it had reviewed the application of the highest bidder and found that party to be qualified.

All moneys raised from the use of competitive bidding would go to the general fund of the U.S. Treasury. Winning bids could be paid in four equal annual payments, to begin prior to the issuance of a license, or at the bidder's option, in a lump sum. The use of a payment plan in spreading out capital needs would help smaller businesses.

The Commission would be required to report annually to Congress on its experiences with these value-based assignments, and the law would sunset in five years.

Value-based assignments would provide significant advantages over existing procedures. First, they would speed up the delivery of services. Comparative hearings usually take 18 to 24 months, while lotteries go faster but still take about a year, due to the large number of participants.

Even after a licensee is selected, the license is often sold to another party who values it more. For example, over 40 percent of the non-wire line cellular licenses granted in the past few years have been resold—on average less than one year after grant of their initial construction permits.

This resale provides a windfall and adds to delay, as the second license holder is frequently the one that actually starts the business.

Second, value-based assignments would substantially reduce both the private and public costs involved in the initial assignment process. Comparative hearings and lotteries use substantial legal and technical resources in preparing for the comparative hearings. The Commission must devote large amounts of staff time to handle the applications.

In the competitive bidding process, only the winner of the auction would have to prepare a complete application, resulting in much lower costs.

But perhaps the most compelling reason for using value-based assignments is the undue economic windfall that accompanies traditional assignment techniques. On the day the assignment is made, a liquid market value is established for that license, which is virtually certain to be many times the cost of surviving the often senseless license assignment process.

In short, what on Tuesday is the public's right, with a non-liquid market value, on Wednesday is the winning licensee's right with a very liquid market value.

How much of a profit can be made? Well, "Business Week" estimated that Metromedia's chairman made about $1.4 billion on the 1987 sale of its cellular phone operations in Chicago, Washington, Baltimore, and Gary, Indiana, along with its paging and mobile radio operations.

They note, by the way, that this amount is roughly equal to the total revenues of all U.S. cellular services for the year 1987.

It is not surprising, then, to learn that in the most recent lottery proceedings at the Commission literally tens of thousands of applicants have sought a chance at this latest sweepstakes.

Finally, the use of value-based assignments would raise substantial public revenues in connection with the licensees' use of a public resource. By contrast, currently the large amounts of money represented by the initial value of the license goes to the surviving or lucky applicant. These parties, as pointed out, often sell their license to a person who wants to run the business.

The only difference the President's proposal would make is that the public will receive the payments. It is estimated that the six megahertz designated for assignment through auctions in the Administration's proposal could raise approximately $800 million for the Treasury.

Now, Mr. Chairman, I mentioned that I was going to comment briefly on several comments that Mr. Friendly made, because I frankly think his comments give a distorted view of the video smorgasborg, if you will, or the audio smorgasborg as well, available to the American public.

First of all, there are increasing numbers of radio stations going to all news and information. That is not my opinion; that is fact.

Secondly, cable has provided a number of, through narrowcasting, news services—the Discovery Channel, Nickelodeon, C- SPAN, Arts and Entertainment, Disney, just to name a few. That is fact, not opinion.

Also, commenting on CBS, no, they do not do CBS Reports any longer, but at last count CBS has three prime time hour-long news shows a week—60 Minutes, West 57th Street, and 48 Hours.

So I would simply like to indicate that, while we can all find fault with what is currently available, that it is important to have a correct record on what is currently available.

Thank you.

Senator INOUYE [presiding]. Senator Hollings.

The CHAIRMAN. Thank you, Mr. Chairman.

With respect to the spectrum fee that you recommend, Mr. Sikes, of course you know we made the good college try, almost to the point of embarrassment here. We had these so-called Gramm-Rudman-Hollings provisions to comply with, and the only fellow not complying was Hollings himself, or the Commerce Committee.

All of the other committees had come up with their stated amounts, and we could not find on this committee for the spectrum auction proposed. So there is no use to go into the merits of it. Politically it is unattainable.

And I would just ask one question. Where do you get the two percent that is equal to the capital gains tax and so burdensome and everything, as you started off with? Capital gains is 28 percent.

Mr. SIKES. Well, the tax is on the gross receipts. So somebody can, in fact, sell something at a loss—and I sold a radio station for a loss. Maybe I am the only dummy in the world that ever did so.

The CHAIRMAN. You are a rarity.

Mr. SIKES. If you look at the AM band and you follow the steady decline in that band, as it used to have 100 percent of the audience and now it has about 25 percent of the audience, you will know that quite a few people who have owned AM radio stations in the past few years have ended up losing money in the course of owning them.

And I happen to be one of those persons. Fortunately, I only had one.

The CHAIRMAN. Well, very good. But of course, whoever paid for that station, even at a loss or a gain, however, certainly paid the lawyers and certainly paid the county on the transfer of it, and if there was a sales agent paid him. So there was more than two percent involved in the sale to those who were not owners of the spectrum.

And here, as owners of the spectrum we still get zero. So it does not apply, as I see it. But I see we differ on that.

I thank you, Mr. Chairman.

Senator INOUYE. Senator Rockefeller.

Senator ROCKEFELLER. Mr. Sikes, I would assume that you are in favor of the line item veto?

Mr. SIKES. Yes.

Senator ROCKEFELLER. I am looking at the funding for—this is just for the Corporation for Public Broadcasting over the years. And there have been Presidents who have opposed it. President Nixon has.

President Reagan has talked about phasing it out by 1991, 1992, wants to end the facilities program.

Now, you would agree with me that these next four or five years are going to be very tough budget years in this country?

Mr. SIKES. Yes.

Senator ROCKEFELLER. The President does not want to raise taxes. None of the people now running for office have indicated that they want to raise taxes. Some have indicated that they would under no circumstances raise taxes.

We have $150 billion, or whatever one might want to pick, of budget deficits to take care of. No new taxes are promised, which means there are going to have to be budget cuts.

Now, my question is, how does one defend public broadcasting if, for example, there is a line item veto, which you favor? And so your philosophy has to be consistent in your response to my questioning. How does one defend it?

We defend it up here by taking what comes from the White House in certain areas and then increasing it. That has been fairly easy up until recent times. It is not going to be very easy from now on.

And if we do increase it, we are going to have to decrease something else. And even if that process is accomplished, when it goes to the White House and there is the line item veto, where do you think the President might line item veto?

There would certainly be—and something which would reflect his priorities of how dollars should be spent, public broadcasting would be, I would think, one of the first candidates.

And so I would just like you to sort of respond to that.

Mr. SIKES. Well, first of all, I believe that public broadcasting is very important. That might not be a fashionable statement, but it is clearly my own personal belief. And I have worked in years past in the public broadcasting system, not as an employee but as a volunteer.

Secondly, I know that there has been, for example, an effort to end the facilities program, I think dating to 1981, if I am not incorrect on that. And each year, of course, it passes notwithstanding the recommendation that it be phased out or ended.

And so I think the only kind of answer I can give you is that the Congress I think has a high enough support level for public broadcasting that, if it is zeroed out through a line item veto, that that veto would be overridden.

Senator ROCKEFELLER. That is encouraging.

In looking at public television income and just public television alone, fiscal 1986, the Federal government does about 15.5 percent of that, and then subscribers 22 percent, state governments 21 percent, business 15 percent, state colleges 6.9, local governments 4.0, foundations 3.6, and on and on, private colleges 2.2 percent.

Now, most of those are also under stress. The MacNeil-Lehrer Report has been mentioned this morning. AT&T, which is not a small enterprise, is pulling back from that because—they are, I believe, the largest corporation in terms of assets in the nation, and they are pulling back from that because they are not sure that they are in the position to do that.

Foundations—the Ford Foundation once did this more than they do now. Foundations generally are pulling back from a lot of this. Businesses have to. State governments are under new kinds of pressure. Local governments, without revenue sharing and all that kind of moneys now, certainly are under pressure.

So you try and look at where will this money come from. Now, the President suggests an auction fee, but that auction fee would not apply to broadcasters, wherein I would suppose he means cellular radio, paging, microwave, satellite, business and private radio, et cetera.

My question to you is, what kind of money are we going to get out of that?

Mr. SIKES. Well, we have estimated that—and this is based upon a study done by Transcom for the FCC—that the six megahertz which is recommended, which would be, as I indicated, likely used for mobile services, many of which you have just named, would have a value—and this is a conservative estimate—of $800 million.

Now, most of the other unassigned spectrum, which is all that we have recommended be used for auction, is in the above one gigahertz band. Now, there is a great deal of research going on today as to how to use the one gigahertz band for the kind of communications, you know, mobile communications, satellite to ground communications, that we have been discussing.

I am confident that there will be ways to mine those bands as well and that additional dollars, whether used for public broadcasting or something else, can be secured in the years to come through additional auctions of that spectrum.

Senator ROCKEFELLER. What was the reason or what is your view as the right reason for not including broadcasters in that auction fee?

Mr. SIKES. Because it is a content-based medium, which reflects on some of the comments in the earlier part of the hearing. It is clearly a medium where preferences, to the extent they exist, are felt to be extremely important, minority preferences and the like.

And I think it is essentially for those two reasons that broadcast spectrum is not in our bill.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator INOUYE. Senator Packwood.

Senator PACKWOOD. Mr. Chairman, you answered the last question I was going to ask, of Senator Rockefeller, why you did not include the mass media.

I just have a couple of questions. One, your argument is that Senator Hollings' fee is by and large going to fall more proportionately, disproportionately, on small rather than large entrepreneurs, because many of the larger ones simply do not sell their licenses, do not sell their properties; is that correct?

Mr. SIKES. That is correct.

Senator PACKWOOD. You do not find many of the O&O stations sold. I had not thought about all of the basically non-broadcast frequencies—I mean, the non-commercial broadcast, the AT&T's. I do not think those ever get sold. Once you get them, you just hang onto them.

Mr. SIKES. Right.

Senator PACKWOOD. Now tell me how your proposal, from the standpoint of the small entrepreneur, in your judgment would be fairer than Senator Hollings' proposal regarding from whom it raises money?

Mr. SIKES. Well, I think, first, it is likely to be the larger businesses that acquire the spectrum rights in the six megahertz that we have set out. One of the services likely is the air-to-ground phone service currently offered on some airlines.

Plus, of course, these are new entrants and in my view should be denied a windfall. And then, statistically in 1986–87 15 percent more AM's traded than FM's, and 22½ percent more UHF's traded than VHF's. And so I think that would indicate that a lot of the churn, if you will, is in the less valuable part of the spectrum.

On the other hand, given that these are new entrants, we believe they should be denied a windfall profit, as I think some of the statistics I outlined suggest occurs. They are likely to be big company services. That would in the round, if you will, cause small entrepreneurs to be better off than large businesses.

Senator PACKWOOD. A last question. How does your proposal differ from the FCC's auction proposal?

Mr. SIKES. Well, it differs in several respects. First of all, it calls for annual reports to the Congress, because this is an experiment and we believe that it should be annually evaluated, assessed, and reports made to the Congress.

Second, it deals with only the six megahertz. The FCC has no authority to go beyond that, no discretion whatsoever. We also added a third element and that is the payment plan, so that the capital needs could be spread over four years, in order that the "deep pockets" bidder would not be as favored as many believe that kind of bidder would be.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator INOUYE. Thank you.

Mr. Secretary, in your statement you have suggested that if this were a cost of regulation fee you would support it. Is that correct?

Mr. SIKES. Well, I did not mean to say that. Certainly, something I might have said might have been so interpreted. There is a cost of regulation fee which was passed a little over a year ago, which I think raised $23 million in the first year.

And you know, I think if this was strictly a cost of regulation approach we would probably have a different proposal on the table and one that perhaps the Administration could support.

Senator INOUYE. But you are opposed to a fee that is not a cost of regulation fee?

Mr. SIKES. Well, the proposal that we have put forward for value-based assignments would raise, of course, money well beyond any cost of regulation, and receipts would go into the general treasury, some of which might in at least a theoretical sense go to public broadcasting.

But we would not support the earmarking or the trust fund provision.

Senator **Inouye**. I have been asked by three of our members to be given the opportunity of submitting questions to you for your response, if you will.

I would like to thank you for your contribution this morning.

Mr. **Sikes**. Thank you, Mr. Chairman.

[The statement and questions and answers follow:]

Statement of Alfred C. Sikes, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, Department of Commerce

Mr. Chairman and Members of the Subcommittee: Thank you for this opportunity to present the Administration's views on Senate Bill number 1935—the "Communications Transfer Fee Act of 1987." In addition to discussing this bill, I would also like to take some time this morning to outline briefly the Administration's proposal to test the use of competitive bidding to assign certain spectrum use licenses. While the subject matter of the two proposals is related, in that they both address use of the spectrum and the raising of revenues for the government, they address very different issues and markets. In addition, we think it is important that the Administration's proposal be adopted whatever the ultimate disposition of S. 1935.

INTRODUCTION AND OVERVIEW

The Communications Transfer Fee Act of 1987 seeks to accomplish many objectives through what amounts to a tax on the sale of broadcast stations. Some of these objectives are commendable, but could be achieved in a more equitable way. The Administration opposes S. 1935 for several reasons.

As I will explain later in my presentation, the Administration's proposal to use competitive bidding to assign licenses to use certain portions of the radio frequency spectrum is very different from this proposed transfer tax. The Administration proposal deals with the assignment of *new* spectrum, and will not affect existing licenses. It is being offered as an alternative to the comparative hearing and lottery methods of licensing such use. It is far superior to the current and cumbersome mechanism by which applicants invest in lawyers, engineers, and economists in order to convince the FCC that they are the most qualified applicants and should be awarded for free a new and valuable license. And it is far superior to the get-rich-quick sweepstakes which has developed out of the lottery system of awarding licenses. It does, in short, fulfill the public not the private interest.

THE "COMMUNICATIONS TRANSFER FEE ACT OF 1987"

Description of the Bill

Let me turn first to the Communications Transfer Fee Act. If enacted, this proposal would make two changes to the Communications Act on which I have been asked to comment today.

First, the bill would impose a two-tier transfer tax on broadcast station sales. There would be a levy of two percent of the sales price, or the fair market value, whichever is higher, on sales of broadcast licenses or construction permits and the associated assets, such as the transmission facilities and any related real estate. There would be an additional two percent charge for most transactions which occur within three years of the seller acquiring the license.

Second, starting with Fiscal Year 1990, the revenues raised from the transfer taxes would be put into the "Public Broadcasting Trust Fund." These monies would be used to fund the Public Telecommunications Facilities Program, administered by NTIA, and programming and operating subsidies for public telecommunications stations, as administered by the Corporation for Public Broadcasting ("CPB"). The bill also includes automatically increased authorizations for both of these programs in perpetuity.

ADMINISTRATION OPPOSITION TO S. 1935

The Administration is opposed to the basic concept embodied in this bill—a sales tax on the transfer of broadcast licenses.[1]

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[1] The Department of Justice has indicated that it intends to express additional concerns with S. 1935 by a letter to the Subcommittee.

One thing should be made clear at the outset. This transfer tax is not a cost-of regulation fee. The FCC already imposes cost-of-regulation fees for its oversight functions, including the review of applications for the transfer of licenses. That fee, based upon the cost involved in the FCC's review of the transfer, was enacted by the last Congress and was supported by the Administration. The FCC's cost-of regulation fees apply whenever the FCC must review a proposed activity by the licensee, e.g., license renewal or the modification of the license. The proposed tax, however, would apply only when a license is transferred. Consequently, if a licensee holds onto its license, it would never be subject to this levy.

Another generally held misconception about the proposal is that it is merely a tax on the sale of a broadcast license. It is a tax on the sales of the assets of the broadcast station, such as the transmission and studio facilities, in addition to the license. In this sense it is equivalent to the imposition of a special Federal sales tax on the sale of all such assets, including, for example, the real estate involved.

But beyond that, it is a tax on the intangible assets of the broadcaster. This proposal would, in effect, tax the talent, the initiative, the creativity, the service and the goodwill that has been built up by the broadcaster. Thus, it is in reality much more than a tax on spectrum usage.

It is also not an inexpensive tax on the broadcaster. While the numbers involved may seem small, 2 percent or 4 percent, in reality they can be quite large, for this is a tax on gross receipts, and applies regardless of whether there was a gain or loss on the sale. In some instances, the 2 percent tax imposed by this proposal could be larger than the capital gains tax on the transaction. This is pointedly true if, as in the case of many AM and UHF stations, there is actually a loss on the sale. Further, this tax would be in addition to capital gains and related taxes.

This could have an especially damaging effect with respect to small markets, start-up operations and crucial areas of increasing media diversity. Although the true effects of this tax on broadcasting have not been adequately examined yet, it appears that the tax would fall most heavily on AM and UHF stations. These operations, many of which are already the least economically viable, are the most traded properties. They thus would bear the brunt of this transfer fee. Conversely, the tax is less likely to be paid by the largest companies which tend to hold onto licenses the longest.

This result could jeopardize ongoing efforts to revitalize the AM radio service and develop and maintain competitive UHF stations. Contrary to conventional wisdom, in many instances the physical property associated with these stations is more valuable than the license itself. Yet they will be subject to this tax. This would be true even if the station were sold at a loss. The result is that trade of these stations, which can lead to the most efficient use of their licenses to serve the public, will be retarded.

In addition, S. 1935 would effectively reinstate the three year antitrafficking rule. There has been no showing as to why the government should impose itself in this area and limit a licensee's ability to use its property most effectively. While there was a flurry of trading after the demise of the former FCC antitrafficking rule, many believe that was a transitional distortion aided by the prospect of and later the change in the capital gains tax. And, in any event, there has been no showing that the public has been harmed.

We also oppose the direct funding of public broadcasting operations through this bill. Authorization and appropriation levels for the PTFP and CPB programs should reflect policy and program needs. (As you know, the President has proposed to freeze CPB funding at its 1988 level and has proposed zero funds for PTFP.) They should not be automatically increased each year, as the bill would do for their authorization levels. Nor should the funds available for public broadcasting be based on wholly unrelated external activities—the number and price of transfers of commercial licenses in a given time period. Otherwise, the funds available in the trust may be too great or too little to fulfill public broadcasting's needs.

I would now like to turn to the Administration's proposal to test the use of competitive bidding in the assignment of certain spectrum licenses. This proposal is presented as an alternative to the current methods available for assigning new licenses, and not as a means of extracting monies from existing licensees.

THE SPECTRUM ASSIGNMENTS IMPROVEMENT ACT OF 1988

The "Spectrum Assignment Improvements Act of 1988" proposed by the Administration is intended to benefit the public through the use of value based assignments using a competitive bidding procedure. The Act would speed up the provision of new services, protect the public's property right in the spectrum, and provide significant new revenues to the United States Treasury.

The FCC currently has two means of assigning licenses—comparative hearings and, in some instances, lotteries. These procedures, especially comparative hearings, can be slow and expensive. And these trouble-filled procedures do not, as a practical matter, determine who will ultimately be using that spectrum to serve the public. The authority to use competitive bidding would test a third method of assigning licenses for unassigned spectrum, one which would reduce the costs of selecting a licensee while speeding up the process and getting the license to the party who most values it sooner.

Description of the Proposal

Under the proposal, competitive bidding would be used ony for currently unassigned spectrum. And let me emphasize that it could not be used for mass media, public safety and amateur radio services. The FCC would be authorized to use the competitive bidding process only in the assignment of licenses in the remaining unassigned six megahertz in the UHF band—the 849-851, 894-896, 901-902 and 940-941 MHz bands. Services which are compatible with these bands could include land mobile radio, cellular radiotelephone, basic exchange telecommunications radiotelephone, and air-to-ground telephone.

The FCC could use a competitive bidding procedure within these limitations if it determines that there likely will be, or there actually are, mutually exclusive applications for such a license or construction permit. In such a case, the FCC would make the highest bidder the tentative licensee. The Commission could not award the license, however, until it had reviewed the application of the highest bidder and found that party to be qualified. All monies raised from the use of competitive bidding would go to the general fund of the U.S. Treasury.

Winning bids would be paid in four equal annual payments, to begin prior to the issuance of the license or construction permit, or at the bidder's option, in a lump sum. The use of a payment plan spreading out capital needs will help smaller businesses that wish to participate in competitive bidding.

The Commission is directed to report annually to Congress on its experiences with these value based assignments and their effect on licensing. The Act's grant of authority to the Commission will sunset in five years. At that point, Congress can evaluate the desirability of continuing to use competitive bidding to assign new spectrum licenses.

ADVANTAGES OF VALUE BASED ASSIGNMENTS

Value based assignments would provide significant advantages over existing procedures. First, this method will speed up the delivery of services to the public. Comparative hearings usually take 18 months to two years to select a licensee, and may drag out further if the final decision is appealed in the courts. Lotteries, while somewhat faster, still take about a year to select a licensee, due to the large number of participants. Even after the licensee is selected by these administrative processes, the license is often sold to another party, one who values it more than the initial licensee. This resale, besides providing a windfall to the initial licensee, adds further delay before the party who wants to put the license to work can actually do so. Use of competitive bidding would avoid delay and allow the eventual licensee to begin service sooner. By eliminating frivolous applications, value based assignments will tend to ensure that the right to use this resource is assigned to those who value that right the most, as reflected in the economic value they put on it.

Second, value based assignments will substantially reduce both the private and public costs involved in the initial assignment process. Comparative hearings and lotteries use substantial resources, primarily the time of lawyers, engineers, and other consultants preparing the applications and materials for comparative hearings. In addition, the Commission must devote large amounts of staff time to review the applications—many of which are frivolous—and conduct the lotteries and comparative hearings. The Commission has estimated that it costs the Government alone about $20,000 per comparative hearing and about $5,000 per lottery. The costs to the private sector, from such things as lawyers, consultants, engineers, etc., are many times these amounts. Using competitive bidding, only the winner of the auction would have to prepare a complete application, and the Commission staff would only need to review that application and related materials.

A third reason for using value based assignments is that it will eliminate the undue economic windfall that accrues to the initial licensee under the FCC's traditional assignment techniques while benefitting directly the American public. On the day the assignment is made, a liquid market value is established for that license which is virtually certain to be many times the cost of surviving the often senseless license assignment process. In short, what on Tuesday is the public's right with a non-liquid market value, on Wednesday is the winning licensee's right with a very liquid market value.

How much of a profit can be made through resale of these licenses? Although it is difficult to establish the true market value of a spectrum license, Business Week estimated that Metromedia's Chairman made about $1.4 billion on the 1987 sale of its cellular phone operations in Chicago, Washington, Baltimore and Gary, Indiana, along with its paging and mobile radio operations. They note, by the way, that this amount is roughtly equal to the total revenues of all U.S. cellular services nationwide for 1987.

How widespread is the situation? One more indicator might be the fact that as of January 1st of this year, over 40 percent of the construction permits issued in only the past few years by the FCC through hearings and lotteries for nonwireline cellular operations had already been the subject of a transfer or assignment. The average time from the grant of the construction permit until the request for a transfer of those 117 assignments was 361 days—less than a year. And the average time between the grant of the construction permit and the request for a transfer in the smallest, and most recently licensed of these markets (121-305 markets) was only 169 days—less than half a year.

Its not surprising then to learn that in the more recent lottery proceedings at the Commission, literally tens of thousands of applicants have sought a chance at this latest sweepstakes. Value based assignments will assign the rights to use a public good in a manner that recoups, via the Treasury, the value of those rights to the public. Indeed, the use of value based assignments would raise substantial public revenues in connection with the licensee's use of a public resource. All monies raised from the use of competitive bidding would go to the U.S. Treasury. By contrast, currently the large amounts of money represented by the initial value of a license go to the party which survived the administrative process and received the license to sell.

These parties are not prohibited from reselling the license, and often do, so that in the end the party that values the license most will receive it. The difference the use of value based assignments will make in determining the final ownership of the license in such cases is whether a private party or the public will receive the payments for it. It is estimated that the 6 MHz designated for assignment through auctions in the Administration's proposal could raise approximately $800 million for the Treasury.

CONCLUSION

That concludes my prepared statement, Mr. Chairman. I would be pleased to respond to any questions you may have.

UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications and Information
Washington, D.C. 20230

May 17, 1988

Honorable Daniel K. Inouye
Chairman
Subcommittee on Communications
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510-6125

Dear Chairman Inouye:

Thank you for the opportunity to testify before the Subcommittee on S.1935 and the Administration's proposal to test the use of competitive bidding to assign spectrum use licenses -- the "Spectrum Assignment Improvements Act of 1988." Subsequent to the hearing you sent a series of follow-up questions on the Administration proposal and the use of the spectrum. The answers to your questions, and a brief summary of the Administration proposal, follow.

The Administration has proposed the trial use of competitive bidding for the initial assignment of FCC licenses. It is estimated that this could produce $ 800 million for the treasury from the six unassigned megahertz alone. In addition, the use of competitive bidding should reduce the costs and delay associated with selecting a licensee.

Under the proposal, the FCC would be authorized, on a limited basis, to test the use of competitive bidding in the assignment of licenses for currently unassigned spectrum. Competitive bidding would not be used to assign frequencies in the mass media, public safety and amateur radio services. The FCC could use competitive bidding when there are, or there likely will be, mutually exclusive applications for a frequency. The Commission could not award the license, however, until it had reviewed the application of the highest bidder and found that party to be qualified.

This would be a five year test of competitive bidding. The FCC would be authorized to use the competitive bidding process only in the assignment of licenses in the remaining unassigned six megahertz in the UHF band -- the 849-851, 894-896, 901-902 and 940-941 MHz bands. (Services which are compatible with these bands include land mobile radio, cellular radiotelephone, basic exchange telecommunications radiotelephone, and air-to-ground telephone.) The Commission will report annually to Congress on its experiences with value based assignments and their effect on licensing. At the end of the test period, Congress can evaluate the desirability of continuing to use competitive bidding to assign spectrum licenses.

Question: In your testimony you state that the auction would raise approximately 800 million dollars. How did you come up with that figure?

Answer: It is based on a study done by Transcom, Inc. which valued spectrum for cellular radio in the top 30 markets at $41.1 to $225.6 million per megahertz nationwide. In making our estimates, we used the midpoint $133 million per megahertz. The $800 million figure is on the use of competitive bidding for 6 megahertz as specified in the Administration's proposal (6 MHz x $133 million/MHz = $798 million).

Question: What would be the impact of the auction proposal on the development of new technologies?

Answer: The Administration's proposal will not discourage and may even promote the development of new technologies. A business which wants to test a new technology would have a new way to gain access to spectrum. They could, as they can today, get an experimental license from the FCC or obtain a license in the resale market. The Administration's proposal would make an additional option available, obtaining a license directly through the FCC's competitive bidding process. Indeed, the Administration' proposal should help businesses obtain initial licenses, if they are willing to take the financial risks associated with development of new technologies, by allowing them a greater certainty that they will be the licensee and by speeding up the ultimate transfer of the license to them.

Question: How would this proposal affect the competitive positions of existing licensees?

Answer: The use of competitive bidding for assigning the six megahertz remaining unassigned in the UHF band should not affect the competitive position of most existing licensees. To the extent that existing licensees have obtained their license through the resale market, their cost for the license would be the same as for those getting an initial license through competitive bidding procedures. If the existing licensee obtained its license through a comparative hearing or lottery, its initial costs may be lower, but it must be remembered that one spends -- and risks -- a lot of money to win a comparative hearing (money spent on lawyers, consultants, engineers, etc.) with no certainty that a license will be obtained. To know any effects beyond this, we will have to examine what services the FCC will authorize for those six megahertz and then analyze the existing market, if any, for such services.

Question: **Has deregulation lessened the public interest requirements of spectrum licensees? Is there less risk today of the FCC revoking a license because of the failure to meet public interest obligations?**

Answer: The Communications Act requires a licensee to serve the public interest, convenience and necessity. The deregulation that has occurred in recent years has altered the benchmarks used to determine if a licensee is serving the public, but has not changed the underlying obligation. The public's needs have changed over the years, and consequently the services that are needed to meet these needs have also changed. Deregulation has worked to free broadcasters from outdated prescriptions of how to meet the public interest. Broadcasters now have greater flexibility in how they will meet these needs.

The fact that broadcasters generally do not have their licenses revoked does not necessarily indicate that the FCC is deficient in enforcing the law, but may, and I think it does, mean that broadcasters are, in general, doing a good job meeting the public interest. They continue to serve the public not only because of this provision in their license, but also because it is in the broadcaster's best business interest.

Question: **The NAB in its testimony contends that the communications spectrum, unlike grazing land, timber, or off shore oil deposits, is not eroded by use and that it has no value absent the investment of its licensees and therefore it is illogical to charge for its use. Could you respond to this assertion?**

Answer: The Administration proposal would not charge for the use of the spectrum. It merely requires the licensee to pay a market rate price for the initial spectrum usage license. This would, essentially, take away from the initial licensee the windfall from gaining the initial license and give the revenues to the public. Under the current system, on the day an assignment is made, a liquid market value is established for that license which is virtually certain to be many times the cost of surviving the often senseless license assignment process. In short, what on Tuesday is the public's right with a non-liquid market value, on Wednesday is the winning licensee's right with a very liquid market value.

We thus disagree that the value of spectrum -- a non-depreciating public resource of interest to mutually exclusive users -- is zero. The value of such a resource, like any other, is determined by the interaction of supply and demand. The bidding process assures both the highest returns for the spectrum and its use for the most valued purpose. Contrary to the NAB testimony, the same principle would apply to such resources as grazing land even if they did not deteriorate with use.

Question: **Non-broadcast licensees point to the fact that they too have public interest obligations and, therefore, as with the broadcasters, they should not be required to pay to use the spectrum?**

Answer: The Adminstration proposal does not affect any licensee's public interest obligation. It is merely an alternative device for the FCC to use in assigning licenses. Licensees would still be required to meet all conditions placed on a license by the Communications Act and FCC regulations. As noted in the previous answer, the Administration's proposal does not represent an ongoing charge for use of the spectrum.

The use of competitive bidding will not increase the cost of obtaining a license to any party other than the initial licensee. These parties often do not hold onto their licenses for very long. For example, over 40 percent of the construction permits for non-wireline cellular telephone operations have been transferred, with an average time from the grant of the permit until the transfer request of less than a year. These parties could not have provided much public service, as they probably did not even get their systems operational before selling them, yet they reaped a windfall by virtue of receiving the initial license for the frequencies involved.

Question: Under your proposal, once the available spectrum has been auctioned, no more money could be raised from use of this public resource. Does the Administration, therefore, not wish to capture any more of the spectrum's value?

Answer: The Administration proposal is for a limited test of competitive bidding in assigning licenses and construction permits. It only applies to the six remaining unassigned megahertz in the UHF band, and is only for five years. It has been estimated that this test could raise $800 million for the U.S. Treasury. If this test proves successful, the Congress could then reauthorize the use of competitive bidding for unassigned spectrum.

Question: Why are you only proposing to auction unused, non-mass media spectrum?

Answer: The Administration proposal is only a test of the use of competitive bidding. We do not wish to disrupt current assignments. At the end of the test period, when reviewing the experiences with value based assignments, Congress could consider its use for other services and unused frequency bands.

I would like to take this opportunity to respond to an issue which was raised at the Hearing after my testimony -- the effect of auctions on service in rural areas. I think it important to note at the outset that the Administration proposal for authorizing the use of competitive bidding is different from the FCC's auction proposal of 1987. Our proposal is for a test of competitive bidding, limited to the six remaining unassigned megahertz in the UHF band (the 849-851, 894-896, 901-902 and 940-941 MHz bands). These bands are not part of the allocation for cellular radio service. Consequently, our proposal would not in any way affect the assignment of licenses for cellular services in rural areas, scheduled to begin later this year.

These areas usually have unused frequencies available for the various radio services, if someone wanted to provide that service in that area. In that sense, rural areas may not even be subject to assignments through competitive bidding, as those procedures would not be triggered unless there were mutually exclusive applications for a license.

The only possible impact of competitive bidding, if it were actually held for rural areas, would be to take away the windfall profit from the initial licensee, and allow the public to gain the revenues from the licensing of this public resource.

If I can be of any further assistance to you on this matter, please do not hesitate to contact me.

Sincerely,

Alfred C. Sikes

Senator INOUYE. Our next witness is Mr. Charles Kadlec, and before Mr. Kadlec testifies, I would like to advise those on Panel 1 and 2 that we will be meeting again at 1:30. Obviously we cannot finish today. And members of the committee have other assignments at noon. So I would like to announce to the panel members that we will reconvene at 1:30. I am sorry for this inconvenience, but this is the only way other than to call another session some other day, and that would be, I think, most inconvenient to most of you here.

Mr. Kadlec, thank you for coming, sir.

Please proceed.

STATEMENT OF CHARLES H. KADLEC, INDEPENDENT CONSULTANT TO COMMUNICATIONS INDUSTRY

Mr. KADLEC. Thank you, Mr. Chairman and Senators.

I am honored to be here to share my thoughts and our analyses with you.

Since this is the first time I have testified before the committee, I will give you a brief synopsis of my background.

I have spent 24 years in communications, primarily broadcasting, many of them with CBS and the Tribune Company in New York and Chicago, and the last eight or nine here with, and most recently as President of Frazier, Gross and Kadlec, a Washington-based consulting firm that has provided financial and appraisal services to the communications industry, primarily broadcasting, for 42 years.

Our company in the time that I have been with it has undertaken more than 1,500 assignments for different broadcast and other communications clients, most of which have been involved with valuation and appraisal. So it is from that most recent background that I have that I speak today.

In the brief time I have here, I would like to summarize three of the conclusions that I came to. You have my written testimony, and there is certainly more detail in that, but if I could just turn to three points that I made in that testimony, the first being the outlook for the volume of spectrum transactions over the next year or two. I have estimated that there were about $10 billion, just over $10 billion in transactions in 1987 which would have been eligible for any charges for spectrum fees under proposed S. 1935.

Of that nearly $10 billion, $7½ billion came from mass media, radio and television stations. The $7½ billion figure for radio and television stations was far and away the largest in the history of the industry. It was fueled I think in part by the sale of three large groups, Heritage, Taft and Storer, and because of that, it is difficult to anticipate that we are going to have such large group sales in the future. I am projecting for the next year or two, 1988 and 1989, mass media volume somewhat below the $7½ billion level. My estimate today for 1988 is $5½ billion; in 1989, $6 billion to $6½ billion. But even at that reduced level from this all-time $7½ billion high that we see this year, mass media is going to account for upward of two-thirds of the total spectrum transactions, volume of transactions.

The next subject I want to turn to and just summarize my conclusions is the value of a license. There are two distinct perspectives on this. From the operator and the banker and the appraiser such as myself who looks at the license for a broadcast facility as an ongoing entity, there are many assets that have great value in transactions. Part of our business is to allocate and identify the assets and allocate the values to all the assets that are purchased with a broadcast property.

As I said before, we have looked literally at hundreds of stations over this decade, and the value of a license which is identified separately in our reports varies greatly depending on the situation. There are a number of intangible assets that are appropriate to some stations and not to other. The bundle of assets typically, however, comes up to about 80 percent of the value, 70 to 80 percent of the value, excluding the license, or put another way, the license value that we see and that our clients see represent 20 to 30 percent of the full value of the property that is paid for.

Now, I said there are two perspectives on this. The other perspective which I think is a valid economic perspective, is that these other assets, the tangible assets of the plant itself and the technical equipment and all of the intangibles involved, have much less value without the license. And indeed, technical equipment, if the station is not to be able to broadcast, would have a value of maybe 20 to 25 percent of their full value as a broadcast station.

So the tangible assets and many of the intangible asset values would diminish greatly without the license, and clearly, under that kind of economic scenario, the value of the license itself is certainly the greatest single asset that any broadcast station would have.

I will leave you with that dichotomy for the moment, and of course, I will take questions later, but just turn to the final point that I made in my testimony, and that is who are the individuals or companies that would be affected by charges for the spectrum?

And I looked at the transactions that have taken place in mass media again over the last five years, and found that it is really a handful of broadcasters that account for most of the dollars. We have been hearing about them this morning. The purchase of KTLA, of course, is the outstanding example. But there may be less than 10 percent of the transactions that account for 80 percent of the dollars, the big VHF television stations that we have heard about primarily in large markets.

But that leaves an awful lot of other transactions. In fact, over the last five years, 83 percent of the number of transactions were for radio stations, and most of those radio stations were stations with values of less than $1 million, which would be characterized in today's terms, I think, as relatively small transactions. And most of those, based on our experience in working with these people, are individuals, or small companies, perhaps starting with their first station, that are heavily leveraged, are considered difficult risks by banks, and have difficulty in financing their stations.

So we must remember that there is another part to this equation, that there are many, many individuals working at the smaller end of the broadcast spectrum that are going to be affected by any charges. There are many constituencies involved in broadcast ownership, but there are two distinct groups here: one is the handful of large corporations that buy large stations and pay large dollars for them; but the overwhelming numbers are the individuals that are buying and selling small radio stations.

That summarizes, I think, the conclusions of my report. I would be happy to entertain any questions that you may have.

Senator INOUYE. Before proceeding, without objection, all of your statements will be made part of the record.

Chairman Hollings?

The CHAIRMAN. Thank you, Mr. Chairman.

Of course, as you describe it, Mr. Kadlec, that is an experience that we all in this room have had, small individuals buying and selling, renting property. No complaint. Everybody is delighted to pay the realtor the 5 percent fee, the lawyer 1 to 2 percent to search the title, the registration fee down at the district. That goes on every day with little small things.

So what I am getting at time and again is, the real value, as you have just attested, is the license. The real value is that spectrum. And we are getting absolutely nothing for it.

So I mean, all of those little small things and little radio stations, in fact, the small ones, all of those others, land mobile, satellite, everything else, they all joined in the transfer fee last year. So they did not object. They realized that they had to pay something, and it was more merit-based, you might call it, than any of the other particular fees. The spectrum is worth far more than the lawyer, far more to the county to register those papers, or even perhaps the realtor for his particular commission, or the financier. You are talking about troubles. They all have financial troubles: the points that the bank, the savings and loan, puts on it.

So what you are attesting to is nothing new. The only thing new is that we were trying to get to that major value, and I think you would readily agree that major value is worth something, and to have the one group that is making over a short period of time where they double in value just to 2 percent when it has gone up from that $230 million to the $510 million, as Mr. Friendly has testified, certain it is that that particular spectrum, the public ought to receive some remuneration. We would not dare rent then the grazing lands to put their cattle on, we would not dare take the timber lands and allow the cut to occur without getting our fees. There is no occasion that the Federal Government does not get it except here.

But I do appreciate your appearance here. Thank you, Mr. Chairman.

Senator INOUYE. Senator Packwood?

Senator PACKWOOD. Mr. Kadlec, your testimony goes right along, not in the same philosophical sense as Mr. Friendly's, but it is wonderful testimony, totally different subject, but it is a pleasure to have a witness who knows his subject so thoroughly, and you lay it out so dispassionately.

I have only a couple questions. One is on the value of the license, because this is a perpetual argument. All you get is a license, and everything else is de minimis.

I am looking at your statement where you say on the average, you value the license at 20 to 30 percent in a mature, well-established station, and this last year you have had some licenses that you valued as little as 10 percent and some as high as 40 percent, but as a rule of thumb, the bigger the market, the higher the value of the license, the more mature the station, the better the value of the license.

Mr. KADLEC. I think that is generally true. There are certainly exceptions.

Senator PACKWOOD. And you also indicated that because of the sales of Taft, Storer and Heritage, the figures in terms of the mass market sales last year may be slightly bigger because those were unusually large purchases that are not going to happen every year.

Mr. KADLEC. That is correct, although in recent years we have seen a lot of large purchases. But being a conservative forecaster, I hate to project those things to continue. They may well.

Senator PACKWOOD. Now, the question raised by Mr. Sikes and the others is about whom the incidence will fall under Senator Hollings' proposal. The proposal is based upon the gross revenues of the station, Mr. Sikes, argues that many of the licensees never transfer their license—they are not in the commercial broadcasting business, and that many of the large O&Os do not transfer their licenses, they just hang on to them. In your judgment, will a disproportionate share of the money we raise—and you can define the word as you want—come from smaller station sales?

Mr. KADLEC. Well, in my judgment, based on what has happened over the last five years, a disproportionate amount of the doilars will not, but a disproportionate amount of the individuals or companies affected will be the smaller.

Senator PACKWOOD. Simply because you have more smaller sales.

Mr. KADLEC. That is correct.

Senator PACKWOOD. And that a radio station in Minville, Oregon, population 15,000, is more likely to be sold two or three times in 15 years than is King Broadcasting's television station in Portland.

Mr. KADLEC. Well, and as I said, over the last five years more than 80 percent of the transfers were for radio stations.

Senator PACKWOOD. Excellent testimony. I appreciate it very much.

Thank you, Mr. Chairman.

Mr. KADLEC. Thank you, Senator.

Senator INOUYE. Thank you.

Mr. Kadlec, about how much will it cost to construct a station similar in size, capacity and power of KTLA in the same location?

Mr. KADLEC. That is a very difficult question to answer because KTLA is a property that encompasses more than a city block. It has five production sound stages on it. It is a very atypical property.

I might also add that in the transactions that took place, both the KKR and the Tribune Company, I believe, those facilities were leased back from Mr. Autry rather than purchased.

But to reconstruct KTLA would cost an enormous amount of dollars. A typical, if there is such a thing as a large market VHF television station equipped with a couple of studios, as most of them are, would in my judgment probably approach $10 million to reconstruct. The usual price for building a television station today, most of these are UHFs with minimal facilities, is in the range of $4 million to $5 million, so perhaps a KTLA would be more than $10 million, certainly not more than $15 million.

Senator **Inouye**. How much would it cost to build Channel 5, the Metromedia station here?

Mr. **Kadlec**. Well, I would have to give you the same answer. I think to replicate a station like that, I am not familiar with the facilities there particularly, but I am with many large market VHFs. My judgment would be in the $10 million to $15 million range.

Senator **Inouye**. How much is it worth?

Mr. **Kadlec**. Channel 5 in town?

Senator **Inouye**. Yes.

Mr. **Kadlec**. Well, I was not prepared to answer that question. It is certainly well over $100 million.

Senator **Inouye**. Thank you very much, Mr. Kadlec. I appreciate it.

The hearing will stand in recess until 1:30 this afternoon.

[The statement and questions and answers follow:]

Statement of Charles H. Kadlec

Mr. Chairman and Distinguished Members of the Committee: Thank you for the opportunity to address the Communications Subcommittee on certain financial issues relating to Senate Bill 1935. My name is Charles H. Kadlec and I am an independent consultant to the communications industry. Until last week, when my company was sold, I was President and majority owner of Frazier, Gross & Kadlec, Inc., a Washington, D.C. based company that has provided financial and management consulting services to the communications industry since 1946.

CREDENTIALS

My personal experience in broadcasting reaches back twenty four years, eleven years in New York and Chicago in senior financial positions with the CBS Owned Television Stations Division; four years in Chicago with the Tribune Company as chief financial officer of its television and cable arm, WGN Continental Broadcasting, and the last eight years in Washington with Frazier, Gross & Kadlec, Inc. I draw primarily from my experience at Frazier, Gross & Kadlec for my testimony here. That company's core business centers upon independent valuations of communications properties for buyers and sellers, investors and lenders and the courts. (I have testified as an expert on value and economic feasibility before the FCC and state and federal courts.) Frazier, Gross & Kadlec also appraises the value of the assets acquired in a communications transaction for the new owner. Additionally, the company provides special economic studies, new venture feasibility analyses, market analyses, and general management consulting.

At its peak, Frazier, Gross & Kadlec employed more than forty full-time employees—financial analysts, communications engineers and individuals with industry operations experience. I joined the firm in 1979 and since that time the company averaged upwards of 200 consulting engagements annually. While its clients are primarily television and radio broadcasters, the assignments run the gamut of appraisals from cable to paging to cellular to satellite networking. From the appraisal perspective, no other company offers the breadth or depth of Frazier, Gross & Kadlec's communications experience.

In support of our work, the firm maintain an extensive library of broadcast transaction and operating financial data, drawing upon information supplied by the Federal Communications Commission, the National Association of Broadcasters, the National Cable Television Association, the Independent Television Association, the Television Information Bureau and publications provided by industry analysts such as Broadcast Investment Analysts, Paul Kagan Associates and James Duncan. The company also subscribes to a score of trade publications. Additionally, Frazier, Gross & Kadlec maintains its own database of broadcast station transactions.

OBJECTIVES OF TESTIMONY

My purpose in this testimony is to provide the Communications Subcommittee with objective information relative to the debate regarding Senate Bill 1935. It represents my best effort to provide an evenhanded analysis of existing data and my assessment of near term-trends. The testimony does not present an advocacy position.

Specifically, my testimony addresses the following four questions:

1. What is the outlook for the value of communications spectrum transactions?
2. How are mass media properties valued?
3. What are the assets purchased in a broadcast station mèdia transaction?
4. Who will be most affected by a charge for the transfer of spectrum use?

Since mass media (radio and television stations) accounts for most of the communications spectrum transaction values and because my industry experience has focused upon broadcasting, this testimony itself primarily addresses radio and television station transactions.

TESTIMONY

A. What is the outlook for the value of communications spectrum transactions?

The volume of communications spectrum transactions has been, and will continue to be, dominated by the sale of radio and television stations. Using FCC estimates of the consideration received in the sale of private radio and common carrier businesses and recently published (Broadcasting magazine, February 8, 1988) mass media trading summaries for 1987, broadcasting currently accounts for about three quarters of all arm's length transactions.

ESTIMATED 1987 SALES VOLUME

[In million of dollars]

Private radio		8.0
Common carrier:		
Space stations	2,500	
All other	1,561	
Total	4,061	[1] 2,233.0
Mass media:		
Radio	1,236	
Television	1,662	
Groups [2]	4,611	
Total	7,509	7,509.0
Total communications spectrum sales		[1] 9,750.0

[1] Assumes 45 percent of common carrier transactions were proforma (FCC estimate).

[2] Transactions in which radio and television stations were sold together.

Thus radio and television station trading accounted for about three quarters of total communications spectrum sales in 1987.

In my opinion, the 1987 broadcasting group sales volume of $4.6 billion, largely the purchases of the Taft, Storer and Heritage television stations, is unlikely to continue at such a high level. (Over the past five years reported group annual sales volume has averaged $1.6 billion.)

I estimate that mass media station transactions will be approximately $5.5 billion in 1988 and $6.0 to $6.5 billion in 1989. While these estimates represent a decline from 1987, they are equivalent to the industry's previous highs in 1985 and 1986. However, even if group sales volume diminishes to these levels, mass media transactions are likely to constitute at least two thirds of the total communications spectrum transaction volume over the next two years. The broadcast industry will be responsible for the lion's share of proposed charges for the use of the spectrum.

B. How are mass media properties valued?

Unlike some capital intensive industries where asset replacement or book value may be indicative of fair market value, a broadcast station's intrinsic worth is rarely measured by the "book". A broadcast station's value is invariably determined from its "operating cash flow"[1] potential. This income approach to value is best calculated using a discounted cash flow (DCF) model of expected revenues, expenses and earnings projected, generally, over ten years. For mature properties that already provide a consistent positive cash flow, the value is often ballparked as a multiple (8 to 12 times, depending upon the type of property) of existing cash flow. Also, since broadcast station transactions are a matter of public record, appraisers often use the recent transaction prices of similar station facilities in similar markets as a benchmark.

Other communications companies—cable, paging, point to point and cellular are also evaluated from their existing or potential cash flow. However, since some of the newer communications technologies, such as cellular, have yet to attain stable cash flows, a variant of the cash flow multiple approach, value per subscriber, is often used to estimate their potential value. The value of a cable system, paging system or cellular system, then, is often expressed as "value per subscriber" or "value per potential subscriber." While such a valuation is clearly less precise than that provided by a discounted cash flow analysis, a subscriber multiple is a reasonable quick and dirty technique to employ to value such undeveloped businesses.

Obviously a number of outside circumstances affects the cash flow value of a broadcast station. An extreme example is a property with a license under challenge. In such a circumstance the property cannot be sold without an FCC waiver, so a broadcast station with a challenged license must be valued at a considerable discount from its value with no license encumbrance. At the other end of the "outside circumstance" spectrum, a property in a highly desirable, high growth market, like Orlando, will sell for a substantial premium over a station in a less desirable market. In the radio sector, FM stations with their commanding and growing audience appeal, trade at a premium over AM stations. A station with seller financing will transfer at a greater price than a station that requires substantial bank financing (particularly when funding is tight). A group of stations in the largest markets, such as NBC, CBS, or ABC-owned stations, will sell at a premium because they offer the purchaser immediate and significant market reach. Quality facilities in markets like New York, Los Angeles and Chicago also tend to trade at market premiums because of the importance of these markets to any group owner. The Tribune Company, for example, paid an above market premium of at least 20 percent, in my opinion, when they purchased independent television station KTLA (Los Angeles) several years ago for $510 million.

There are, of course, other circumstances that may affect the value received for any individual broadcast station sales. The intrinsic value of each property, however, is first measured by its profit or cash flow potential.

C. What assets are purchased in a broadcast station media transaction?

There is a common misconception that the purchaser of a broadcast station simply acquires two assets, (1) the tangible physical assets necessary to broadcast and (2) the FCC authorization to broadcast. In fact, the purchaser of a station acquires a bundle of intangible assets along with the physical plant.

For an established station the purchaser is also paying for the cost of building, testing and staffing the operation (going concern). He is also purchasing the station's program format, contracts with talent or management that make station performance above average, other executed contracts or leases, financing agreements in place, any network affiliation, established sales relationships and sales contracts already on the books. The purchaser is also buying market position and, in some instances, entry into a market with unusually dynamic growth prospects. And, of course, the buyer is acquiring that most important asset, the license to broadcast. Frazier, Gross & Kadlec routinely assesses the value of these intangibles for the owners of broadcast properties.

Obviously, the composition and value of both the tangible and intangible assets vary substantially from station to station and market to market. The value of fixed assets depends upon the size of the facility, the extent to which the physical plant (land, buildings and technical equipment) is leased and whether or not the station was required to construct a tall transmitting tower. The intangible assets also vary substantially from property to property. Their composition depends upon the operating style of the previous management and the characteristics of the market and its competition.

Throughout the 1980s, Frazier, Gross & Kadlec has found that a broadcast station's license represents, on average, twenty to thirty percent of the value of assets of a mature, well-established station. There is a substantial range around that average, however. For example, we have appraised radio stations in recent weeks in which the license value was as little as ten percent of a station's selling price, and as much as forty percent. Typically the license represents a greater percentage of value for large market broadcast stations and less in smaller markets.

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[1] Broadcast operating cash flow is income prior to charges for depreciation, amortization, interest and income taxes.

The essential value of an FCC license is understated in this sort of analysis, however. The value of all station assets, tangible and intangible, is clearly and substantially diminished if there is no right to broadcast. While land and buildings may retain all of their value, the technical equipment value is likely to decrease to about 25 percent of its replacement value because of the thin market for used broadcast equipment. A transmitting tower would become worthless, as would intangible assets associated with sales relationships, management and market position. The license to broadcast is indispensable and in that context, the relative value of a license is certainly much greater than half the value of the enterprise.

D. Who will be most affected by a charge for the transfer of spectrum use?

During the past five years approximately 5,700 broadcast station transactions have generated nearly $25 billion for the sellers of the stations. The average broadcast station sale was $4.3 million.

Once again, averages are deceiving. A handful of very large market transactions, such as the purchase of KTLA in Los Angeles for more than $500 million, or the more recent sale of the Storer and Taft groups drive sales and averages upward. The more typical transaction during the last five years was a radio station with a value below $1 million.

BROADCAST STATION TRANSACTIONS—1983–87

[Dollar amounts in millions]

	Number	Value	Average transaction price
Total industry transactions	5,726	$24,413	$4.3
Pure radio transactions	4,743	$5,739	$1.2
Radio percent of total	83	24	

Since 1983, more than 4,700 (83 percent) of the 5,700 broadcast station transactions were "pure" radio station transactions, that is radio stations that were not sold as a group purchase with television stations. The average sales price for these 4,700 "pure" radio stations was $1.2 million—and with some large market radio properties selling in the tens of millions, it is reasonable to assume that most radio transactions were for $1.0 million or less. In my judgement, more than half of the total industry transactions during the past five years could be characterized as "small radio station deals".

The "small radio station deal" by its nature attracts the individual entrepreneur, including the first time owner-operator. Many of these individuals do not have other radio stations to secure their financing. Typically they are fully leveraged and must look to other investors or lenders to underwrite their acquisition. As high risk borrowers, their capacity to raise funds is limited.

Mass media spectrum transactions, therefore, fall into two very different categories. The large corporate, large market transactions account for most of the dollar exchange. The Taft, Storer and Heritage transactions alone, for example, made up nearly half of 1987 mass media transaction dollar volume.

On the other hand, the smaller, under $1 million radio station sale made up more than half of the number of 1987 media trasactions.

SUMMARY

Currently, and for the foreseeable future, mass media will account for two-thirds to three-quarters of total communications spectrum transactions. Mass media transactions, which reached a historic high of $7.5 billion in 1987 as the result of three major television group sales, are likely to diminish to $5.5 billion to $6.5 billion in 1988 and 1989.

Communications properties' values are based upon their cash flow potential and values will increase as cash flow increases. Tangible assets often represent less than half of the asset value for these businesses.

The purchaser of a broadcast station acquires a bundle of intangible assets along with real estate and equipment and the FCC license. These assets range from contracts to leases to market characteristics to going concern. The relative value of the license in purchase price allocations ranges widely, but has tended to fall in a 20 percent to 30 percent range. However, without a license to broadcast, the other tangible and intangible assets are greatly diminished. In that context, the FCC license value would usually well exceed half of the value of the facility.

Mass media transactions have two predominant characteristics. Most of the revenue volume is the result of a handful of large companies purchasing quality broadcast stations in large, desirable markets. The number of transactions, on the other hand, is dominated by small companies or entrepreneurs purchasing a radio station with a value of less than $1.0 million.

QUESTIONS OF SENATOR INOUYE AND THE ANSWERS

Question. You indicate that small licensees will be hardest hit by the transfer fee. How would small licensees be affected by an annual fee?

Answer. My testimony demonstrates that most mass media transactions were small radio station sales. Since 1983, nearly 4,750 (83 percent of total mass media transactions) were for "pure" radio stations. The totals do not include those radio stations that were sold along with television stations in a mixed transaction.

The typical sale, then, is a small radio station, *not* the large, highly visible, highly publicized hundred million dollar television station transaction. It is the small radio transaction that will be most affected.

Relatively small radio transactions tend to attract the small investor and first time broadcast entrepreneur and the financing of the "smaller" transactions is more difficult. There are two reasons for this. First, most experienced broadcast lenders do not participate in smaller transactions because their return is not commensurate with the risk of the loan. Also, the small license holder has fewer resources, is more highly leveraged and is a more risky bet than the larger companies that engage in the larger transactions.

I feel, therefore, an additional two percent fee will prove more onerous for the small investor. The fee will make some highly margined deals uneconomic and kill the potential transaction. In some instances it will force the entrepreneur to find additional subordinated financing which, if available, will be at the cost of substantial owner/operator equity. In either eventuality, a disproportionate number of small investors will be adversely affected.

Question. How would an annual fee affect larger broadcasters?

Answer. For the most part, larger broadcasters face the same funding and return on investment requirements as smaller investors. Obviously, a two percent fee represents a much more significant amount in multi-million dollar transactions. Large investors, however, have greater resources and superior borrowing capacity to the individual entrepreneur. In my opinion, a much smaller percentage of the potential "large" sales would be killed by a transfer fee, although some large transactions would not survive the additional costs.

The significant impact of even a small fee on present and future broadcast transactions will occur for several reasons. Primary among these is that the broadcast economy (primarily the television sector) is undergoing fundamental structural changes and radio and television station operations have emerged in the late 1980s as "mature" businesses. Until the early 1980s, the amount of direct (other broadcast stations) competition for market share and indirect (cable televisio, video cassette recorders, satellite transmissions) competition for the advertiser and audience was limited and predictable. Station values were bid up to record highs in the early 1980s and broadcast investors found themselves negotiating for station properties at higher and higher prices. During the past five years, new independent stations have been constructed in most of the top 100 television markets. Even radio competition is becoming more intense as marginal stations upgrade their signal strength and programming sophistication.

The allocation of national advertising expenditures is also changing. Since 1985 broadcast advertising has experienced lower annual growth rates than in the past due, in part, to fractionalization of these expenditures by cable television and barter syndication programming. The repeal of General Utilities by the 1986 Tax Act has further diminished the acquisition/divestiture incentive for both buyer and seller.

All of these factors combine to minimize the upside cushion that investors relied upon in the 1970s and early 1980s to justify aggressive bidding for broadcast stations. The upward spiral values and number of transactions has come to a halt.

In short, there is simply less "give" to pricing in today's mature station business. As a result, broadcast station investors now more rigorously analyze return on investment, knowing that the extraordinary year-to-year, across the board leaps in appreciation, so apparent earlier in this decade, are unlikely to occur again. In this environment, a relatively small change in investment, revenues, operating expenses or transaction costs can significantly alter the attractiveness of a station acquisition.

Question. Do you believe that the two percent fee will serve as a deterrent to license trading?

Answer. In reply to previous questions, I have stated that the fee is likely to have an adverse effect upon both large and small transactions and the smaller transactions are likely to be most seriously affected. There have been an average of 950 "pure" radio transactions annually over the past five years. It is impossible to predict with any precision just how many transactions a two percent (or greater) would eliminate or just how much equity would be sacrificed to mezzanine lenders to fund this incremental cost. Much of the impact depends upon the availability of capital for broadcast station acquisitions and the willingness of the lenders to "stretch". In June 1988, broadcast lenders are not stretching as they were earlier this decade.

In my judgment, assuming that current tight lending conditions do not improve and the tax structure remains constant, the two percent fee will either eliminate or substantially dilute the primary investor's equity share of 200 to 300 small radio stations deals annually. And the fee may also kill 10 major transactions each year.

The effect of any single factor upon the volume of broadcast station transactions is difficult to calculate. I have already identified the availability of capital and tax reform as two such factors. There are many other variables that also affect the volume of transactions: regulatory climate, interest rates, health of the advertising economy (both national and local), economic health of the local marketplace, a changing competitive environment, and the cost of transactions (legal fees, brokerage fees, transfer fees, state and federal taxes, for example).

In 1981 and 1982, high interest rates kept the number of station transactions below historical averages because buyers could not afford leveraged transactions and sellers were unwilling to sell for bargain prices. The reduction in interest rates, combined with deregulatory stance of the FCC and Wall Street's perception of broadcasting as a "hot industry" fueled demand and substantially increased the number of transactions in 1983, 1984 and 1985. The tax revision spectre helped maintain that demand through 1986 and into early 1987.

Question. How will a four percent fee affect station trading?

Answer. It is my belief that a four percent fee will prove a significant deterrent to the larger transactions. A two percent fee will weed out many marginal smaller transactions, as already discussed. A four percent fee, which is equivalent to a one-half multiple of operating cash flow, will make more of the larger transactions uneconomic. Sellers, wedded to traditional multiples of operating cash flow as a fundamental measure of value, will resist scaling down their asking prices, and some transactions will not occur.

Thus, a four percent fee would, I believe, have a disproportionately heavy impact upon the larger transactions.

Question. How would an annual fee affect non-broadcast users of the spectrum?

Answer. The spectrum fee will probably have a lesser effect upon the non-broadcast spectrum users. There are three reasons for this. First, except for transactions involving satellite launches, the costs of non-broadcast spectrum businesses are smaller and the fees will be proportionally smaller. Second, the new technolgoy users of the spectrum—such as cellular radio—are emerging businesses with a sufficiently positive upside growth potential to absorb the impact of any such fees. These newer technologies are like television station operations of a decade ago when limited competition, a consistently healthy broadcast economy, and a strong demand for broadcast stations helped to assure success.

The final reason that these newer technologies will feel less impact of a transfer fee is that this emerging communications sector is the target of a few large, well-heeled corporations with the resources to absorb the fees.

Question. Will these fees harm the marketplace?

Answer. If by marketplace, one means the volume of buyers and sellers vying for broadcast station properties, the fee will reduce the pool of buyers. If marketplace means the level of advertising expenditures available for the stations in their markets, the answer is yes, theoretically it will cause some harm because the fee will prove a barrier to entry for some new operators that may be able to manage and market the station better than existing management. The extent of this impact is virtually impossible to estimate. However, it would certainly be small.

Question. Would you recommend a sliding scale fee, higher for large transactions, lower for smaller transactions?

Answer. Assuming that a spectrum fee applied to communications business transactions is appropriate, I feel that a lower fee on smaller transactions would prove less disruptive to the small deal flow and would allow the small, new-to-broadcast entrepreneur/owner better access to the industry. If the fee were entirely eliminated for all transactions of less than $1 million, the loss in annual fees, in my judgement, would approximate 3.0 million annually. This would be the cost of maintaining the current entre to this industry for the small investor.

I do not recommend, however, increasing the fee on larger transactions as a guide pro quo. For reasons previously discssed, I feel that any increase in fees will have a deterrent impact upon even the larger transactions.

Question. How much does it cost to construct radio and television stations?

Answer. A television station, with modest but adequate facilities, can generally be constructed today for as little as $4 million to $5 million. This cost would include land, a small general purpose building (15,000 sq. ft. or less) adapted to television requirements, transmitting equipment and broadcast studio equipment. A very tall tower (2,000 ft.) will add another one to two million to the cost. A large market television station, located in a city center and fully equipped for major news and production requirements will cost upwards of $10 million to construct, the total costs depending upon the size and quality of the technical facility, the cost of land and buildings, and the transmitting tower requirements.

Radio stations require much less space and equipment. The cost of the building these facilities will vary with the costs of land, building and towers required, but, on average, a radio station can be constructed today for as little as $250,000 to as much as $2,000,000, depending upon the technical configuration, size and location of the building and extent of the start-up costs.

The cost of constructing the hard assets of a broadcast station is only part of an owner's investment, however. In order to achieve its optimum market position, a broadcast station operator must secure professional broadcast talent, sales personnel and an administrative staff. It must cultivate relationships with advertisers as well as with community interest groups. It must invest in promotion and programming. All of this effort requires an investment in time and money. For example, in a large market it is not unusual for an independent television station to maintain a $50 million or more investment in programming.

Question. How much spectrum used by terrestrial services is used by the broadcasters? Cellular? Private radio services?

Answer. I do not present myself as an expert in broadcast technology. However, it is my understanding that the spectrum use is roughly allocated as follows:

	MHz
Radio:	
AM band	1
FM band	20
Total radio	21
Television:	
VHF band	72
UHF band	336
Total television	408
Cellular	50

On the surface, then, the UHF television band "uses" approximately two-thirds of the terrestrial spectrum available to broadcast, cellular and private radio businesses. That conclusion is simplistic, however. It assumes that all MHz bands in the private communications spectrum are equal when, in fact, technical characteristics vary substantially from the low end to the high end of the band. It does not account for private radio which shares both the UHF television band as well as some higher frequencies. It excludes certain broadcast auxiliary services (microwave links, remote pick-up channels, short wave, microwave channels and MMDS and IFTS).

Finally, such a comparision of the allocation of spectrum space ignores both the numbers of people served and the public service provided by one area of the spectrum (broadcast) vis-a-vis another spectrum (cellular and private radio).

Question. Do licensees usually sell the assets with the license?

Answer. In typical broadcast station sales, whether structured as "asset" or "stock" transactions, the purchaser acquires all tangible and intangible assets, including the license.

There have been only a handful of transactions during the last two decades in which the license was sold separately from other assets, and most of those were for stations in serious financial distress or whose licenses were in jeopardy.

Question. What percentage of the sale price do technical equipment (including buildings and land) and intangible assets represent, on average?

Answer. A Frazier, Gross & Kadlec analysis of hundreds of mature, well-established broadcast station transactions during the 1980s found that, on average, twenty to thirty percent of the total asset value represented the value of the license. There was, however, a substantial range around that percentage. This year, for example, we have appraised station licenses that represented as little as ten percent of the station's value, and as much as fifty percent. Typically the license has a proportionately higher value in large markets and lower value in smaller markets.

Question. What percentage of the sale price do the license and tangible asset, including technical equipment, represent?

Answer. The license and tangible asset components are of greater relative value in small markets and of less value in large markets. In general, the tangible assets and license represent one half to two thirds of the asset value of a broadcast station, with the gap filled by the various intangible assets described in my testimony. There are circumstances, however, where the combined value of the license and tangible assets represents less than half of the facility's value. This usually occurs in large, desirable markets where a premium is paid for a broadcast property.

AFTERNOON SESSION

Senator **Inouye**. The hearing will please come to order.

We now resume our hearings on S. 1935. Our first panel consists of Mr. Henry Geller, former Assistant Secretary for Communications and Information, who is now with the Washington Center for Public Policy; Mr. E. William Henry, former FCC Chairman and presently on the board of PBF and WETA; and Ms. Red Burns, Chair and former member of the Carnegie Commission, presently Chair of the Interactive Telecommunications Program, Tisch School of the Arts of New York City.

Welcome.

Shall I call upon Mr. Geller first?

STATEMENT OF HENRY GELLER, WASHINGTON CENTER FOR PUBLIC POLICY

Mr. **Geller**. Thank you, Mr. Chairman. I strongly support the bill. In view of what has already been testified to this morning, I will be very brief.

First I would just like to say that public broadcasting does serve a very vital function in this country. Mention was made this morning about Disney Channel and Nickelodian, and they are very worthwhile; but it is public broadcasting that serves 90 percent of the population with free service, and that is critical, I think, particularly in this globally competitive world we are in.

That is the service that brings us the educational and informational programming for children. That is the service that brings us in-depth information programming that is so important to a democracy, and that brings us cultural programming for minorities.

Now, based on this morning's testimony it is clear that the funding for it has been inadequate. You, yourself, Mr. Chairman, mentioned the sums for the other countries, such as the United Kingdom and Canada. It has also been made clear this morning that we have a defect in the system. We finessed the long-term stable funding, and it is time to deal with that, long past time.

I recognize there are several ways to do it. Carnegie One made proposals. Carnegie Two made proposals. There is a spectrum auction proposal, and I have supported that. I think from the beginning it would have made a lot of sense, for example, to auction cellular licenses. Instead of Mr. Kluge being a billionaire, the government would have gotten the money for public broadcasting.

As Senator Hollings pointed out, there is no political and practical support for that. I have made proposals to deregulate radio. There are 10,000 radio stations, and in lieu of being a public trustee, let us take money. If you took a 2 percent spectrum usage fee from all radio stations, you would get about $140 million for public radio. There is no support for that.

So when we go off on alternatives like that, they are not really alternatives. We are really just punting again and delaying what we ought to get to.

What is before you in the bill is practical, is doable and, therefore, that is why I strongly support it.

The other thing that I would just like to say is that it is very appropriate to take it from transfers of spectrum. The spectrum is in very short supply. That was made clear in your report on the fairness doctrine where you listed 142 comparative hearings, 47 applicants for one FM frequency.

There is a big fight going on continually between broadcasters and land mobile over UHF, and it will intensify when you get to high definition television.

As Senator Hollings said, it is time now to get some share of that scarcity rent back and dedicate it to a very logically public interest, public broadcasting.

There is one last point, if I may go over it just a little bit. While I believe that everything I have said is a basis for acting, I do want to point out, having read the NAB statement of Mr. Fritts, that the NAB seems to want it both ways. Here, they are saying that they render a great public service; therefore, it is not right to put a fee upon them.

But when we deal with them on children's television, which is up now before the House, they say you cannot put in any obligation that the commercial broadcaster has a duty to render overall educational service to children.

When we deal with them as to comparative hearings, we said that the comparative hearing makes no sense, let us get rid of it; but it was supposed to spur meritorious service. Let us put that in as a standard. The answer is no, they do not want that.

When we deal with them on trafficking, they support proposals that there be no antitrafficking provision put in. Now, a trafficker, Mr. Chairman, is trying to run up the price of the station and sell it. He is not interested in public affairs, public service, putting on a worthwhile program for children. He is interested in getting his money back and maximizing his return. It does not seem to me to make sense to say that is in the public interest.

I notice here that Senator Packwood has returned, and I would say one final thing on that. In the NAB statement it says that the fairness doctrine should be done away with. They approved that. Let us put aside, Senator Packwood, whether it is constitutional or not. That is in court for briefing. The courts are the ones that will render that decision.

The thing I want to emphasize is that if you eliminate the fairness doctrine, you have really eliminated the public trustee scheme. It means that a station in Jackson, Mississippi can get on and now say, "I am a segregationalist. I only want to put on the segregationalist point of view. You must renew me."

It does not make sense, then, to say that he is a public fiduciary. He is not. It means that a station could say, "I only put on people if I get money for it. If there is a proposition filed, I will put on the side that has the money, I will not put on the other side." You then end up with a system of propaganda stations. The unions get a station, business gets a station, and you can argue that this is robust wide-open debate, but it is not the scheme Congress adopted. It is not a scheme of public trustees. It is an entirely different scheme.

So what I am saying is that if the broadcaster has to render community issue-oriented programming but it only has to be the views with which he agrees or for which he gets money, that is not a public trustee. If that system falls because it is unconstitutional, then we have to get on with spectrum auctions; we have to get on with substantial spectrum usage fees, we have to recognize what we are doing.

I am saying that the broadcaster cannot have it both ways. He cannot come before you and say, "Do not do anything to me; I am a public trustee; I render public service," and at the same time say, "Let us knock off the fairness doctrine." There is no such thing as a surgical strike on the fairness doctrine, Senator.

Thank you.

Senator INOUYE. Mr. Henry.

STATEMENT OF E. WILLIAM HENRY

Mr. HENRY. Thank you, Mr. Chairman. I, too, have a longer written statement which I will submit for the record.

I guess I would like first to state, since I do not get that many opportunities, that I have long been a supporter of public broadcasting. Going back to the days when I was Chairman of the FCC, I took every opportunity that I possibly could find to urge the funding of public broadcasting pretty much in the way that it has come about. That was in the days before there was any Federal money for programming and operations. It was merely for facilities.

Once I made a major speech to commercial broadcasters solely on the subject of educational broadcasting, which probably was the first and the last time that the FCC Chairman ever did that.

I also had the pleasure, as you can tell from this morning's testimony from Mr. Friendly, along with my partner, David Ginsburg, of representing the Ford Foundation and Mr. Friendly. I, too, wrote him notes when he was testifying. So I have seen that end of things, and now, as you noted, I am on the PBS board.

I think all of the witnesses have made it pretty clear that we, at least, think public broadcasting is a unique cultural institution in this country.

One aspect that I would like to mention—that I do not believe has been mentioned so far—is the enormous and continuing and, again, truly unique contribution that public broadcasting makes to in-school education and continuing adult education.

Most people do not realize the tremendous outreach that these programs have. I have seen them developed at PBS. I have seen them in my role as Chairman of the Board of WETA here. Years and years of planning go into those programs. You have to involve not only broadcasters and producers but educators and administrators as well.

Those programs, like the others, make good television, but for years afterwards they also make good education. That is a particularly important aspect of public broadcasting which should be emphasized.

I support without reservation the legislative provisions in this bill for a public broadcasting trust fund for all of the reasons, I think, that have been said. It is particularly important, at least to me, that there is a connection, as Senator Kerry said this morning, a nexus between the transfer fee and the use of the spectrum. Why should the people who use it commercially not contribute something to the noncommercial use of it?

So I believe there is a very close connection there, as in the case of the highways and the airlines. The trust fund is paid for essentially by the people who use it, and I think it is a perfect analogy here. So I think this is a fine idea whose time has come.

It is also important to find a source of additional Federal funding via the trust fund mechanism that does not add to the deficit. Since S. 1935 would provide money here, it has that additional benefit.

I also support the transfer fee on the sale of licensed facilities, but I add in the same breath and in the same sentence that it should be coupled with a provision that does away with the current license renewal process at the FCC and substitutes instead a two-stage proceeding.

I think that the current FCC process really is an undue and unreasonable and ineffective method. I do not believe that the objectives of that renewal process are being met. Indeed, as I say in my written statement, I think these procedures, while they stimulate short-range results that are satisfying to industry critics, are of little or no long-term value. Indeed, in many cases they promote the kind of broad deception in this process that if engaged in by a licensed broadcaster might make his license subject to revocation.

So what I am urging is that we have a two-step renewal process. I think it is fair. I really do not believe the broadcasters could complain if this transfer fee were imposed upon them if they also achieved this very important additional legislation.

I would like to make one more comment, and then I will close. I think this echoes what some others have said; that is, that the legal concept of the broadcaster as a public trustee is embodied in more than 50 years of communications law and policy.

That concept today, because of deregulation, is in a delicate balance. I think that the imposition of a fee for the exercise of one of broadcasters' fundamental property rights, namely to buy and sell, would weaken to some degree the public trustee rationale unless it is coupled with the removal of a comparable burden.

In order to retain the public trustee concept, which I strongly endorse, it is important not to tip the scales in the wrong direction.

I sympathize with what Henry Geller said about the fairness doctrine. I do believe, however, that with or without the fairness doctrine, the public trustee concept can and should be retained.

Thank you very much.

[The statement follows:]

STATEMENT OF E. WILLIAM HENRY

Good morning Mr. Chairman and members of the Subcommittee. Thank you for giving me the opportunity to express my views on S. 1935.

I. BACKGROUND

I have strongly supported non-commercial, educational public radio and television since 1963 when I was named Chairman of the Federal Communications Commission by President Kennedy. In those early days of public broadcasting I took every opportunity to urge the adequate funding of this medium from a variety of public and private sources, including a fair share of federal taxpayer dollars.

After leaving the FCC in 1966, I joined the Board of Directors of the National Association of Educational Broadcasters and in that capacity testified before Chairman Pastore of this Subcommittee in enthusiastic support of the Public Broadcasting Act of 1967. That legislation for the first time authorized the expenditure of federal dollars for public broadcasting programming and day-to-day operations.

Since then, as a lawyer in private practice in Washington and in addition to commercial communications clients, I represented the Ford Foundation during the period of its most generous support for public broadcasting.

I am currently a member of the Board of Directors of PBS, the Public Broadcasting Service, and last year chaired its Committee on Program Policies and Procedures which produced revised program guidelines for the system. I am also a member of the Board of WETA, the licensee of public stations WETA-TV and WETA-FM here in Washington, where I recently completed a four-year term as Board Chairman.

I appear before you today, Mr. Chairman, as a private citizen with an abiding interest in public broadcasting, one of our country's most effective instruments for public benefit.

II. WHY PUBLIC BROADCASTING NEEDS A TRUST FUND

To move directly to the bottom line of today's proceedings, I strongly support legislation to create a Public Broadcasting Trust Fund. For reasons discussed later, legislation adopting fees on transfers and assignments of radio spectrum licenses should be coupled the adoption of a new, two-stage license renewal procedure at the FCC. Legislation combining these features would be beneficial to public broadcasters, fair to commercial broadcasters and greatly serve the public interest.

Public broadcasting's history is much like the history of the Trojan Wars and the homeward journey of Odysseus, even though it has had to fight longer than the Greeks and hasn't yet spent its limited funds on a wooden horse. It took fifteen years—from the FCC's set-aside of non-commercial, educational radio and television channels in 1952 to the landmark Public Broadcasting Act of 1967—for the Congress to make federal funding of public broadcasting programs and operations a firm national policy. 1967, however, was merely the beginning of public broadcasting's odyssey. Since then, it has been tempted by Circean calls for reliance on commercials or commercial-like underwriting. It has struggled against Cyclops in the form of myopic presidential vetoes and rescission requests. It has steered precariously between those critics who would smash public broadcasting on the Scylla of irresponsibility in the name of provocative programming, and others who would drown it in boredom in the name of fairness.

In short, public broadcasting's life has been a series of battles during a long, tough journey to attain its present position. It would not have come this far without farsighted Congressional leadership, past and present, and the fundamental good will and approval of the American people. Though not yet home, public broadcasting, thanks to those twin pillars of popular and political support, is on the brink of becoming one of our enduring cultural institutions. What it needs for the last leg of the journey is a permanent source of adequate financial support that only a trust fund can provide.

Public broadcasting revenues today approximate one billion dollars. While these revenues are a measure of the public system's success, they also reflect public broadcasting's still emerging status. In comparison, combined revenues of the commercial broadcasting and cable industries are approximately 50 billion dollars.

It is important to note that only twenty percent of public broadcasting's total operating dollars comes from the U.S. treasury. In terms of value received, this may be the federal government's best buy. Certainly the contribution of public broadcasting to the fabric of our society is immeasurable.

Those of you in Congress who follow this area are well aware of public broadcasting's unique ability to inform, to enlighten and to enrich our lives. You have often been cited to programs of unmatched excellence, each of which evokes a wellspring of positive response. These include regularly scheduled programs or series like the MacNeil--Lehrer Newshour, Washington Week in Review, Frontline, Firing Line, Seasame Street, Nova, Reading Rainbow, American Playhouse, Live From the Met, Masterpiece Theatre and, in radio, Morning Edition and Prairie Home Companion. . . . The list goes on.

You also know the startling statistics demonstrating the relative size of public broadcasting's audiences. A single public television performance of a drama or other artistic performance often reaches more people than have attended all live performances of that particular work in its entire previous history. Yet those audiences are not large enough to support the same programs on commercial networks. Without public broadcasting, these programs would either not be televised at all or be viewed only on limited cable outlets by those who could afford to pay for them.

What is not so obvious and, therefore, needs to be particularly emphasied, is public broadcasting's uniquely valuable contribution to in-school education and to the many formal programs of continuing adult education throughout the country. The ability to do careful long-range program planning is especially important as public broadcasters try to maximize the value of their educational programs. Programs such as the Brain; The Constitution; That Delicate Balance; Eyes on the Prize; and Vietnam: A Television History have an impact that goes far beyond the first broadcast for the television audience at home. Such programs are made available as telecourses for high school and college credit—both to students in classrooms and for adult learners at home. 1300 colleges and universities are working in partnerhsip with local public television stations and PBS to make these courses available—to hundreds of thousands of students for credit each year, and to millions more who watch informally to enhance their own education.

A typical example is the series Congress: We the People, produced by our local station WETA with funding support from the Annenberg/CPB Project. The course includes a full set of print materials for educational use: a choice from one of three textbooks, a study guide for students, and a faculty/administrative guide. Such a program is good television when it first appears . . . and it is good education for years to come.

Achieving that kind of educational impact requires time and money. The educational application must be developed at the start, not as an afterthought. That requires painstaking research and careful planning over a period of years in conjunction with television producers, curriculum specialists, and educational researchers. If funding is uncertain from year to year, fluctuating with the fortunes of politics and the economy, it is very difficult to undertake such long-range projects.

If, then, public broadcasting's track record provides rather clear justification for adequate and dependable financial support, why doesn't the forward year funding process now in place fully satisfy this need? Why does public broadcasting need a trust fund?

The reasons why a trust fund will have greater long-term benefits than the present system can be summarized in five words: insulation, sufficiency, predictability, incentives and diversity.

Insulation means protection of public broadcasting program producers and distributors against the undue influence of funding sources; in this case, the federal government. The strict need for such protection is self-evident, particularly to the members of this Subcommittee and the public broadcasting community. No one has yet put it better than Senator Hugh Scott in the course of debate on the 1967 Act. "I . . . will . . . support the insulating process" [of a separate Corporation for the disbursement of federal funds]," he said, "because I want the electricity that could flow through this system to shock, but I don't want those who are shocked to turn off the juice."

A trust fund would be both a repository of federal funds and, if funded beyond current year requirements, a source of additional sums in the form of earned interest. It would be an ideal vehicle because its reserves would not flow back into the general treasury if unused at the end of a fiscal year. Most importantly, a trust fund would represent more of a commitment to long-term funding than forward year annual funding. Congress would retain, moreover, as it should, a degree of control over the trust fund because, under S.1935, monies deposited in the trust fund could be spent only after appropriations enacted each year for that purpose. Congress would also retain general oversight responsibilities for the manner in which monies disbursed from the trust were being used by the public broadcasting industry.

For similar reasons, both the sufficiency and predictability of federal funding would be increased by the trust fund mechanism. The creation of a special trust fund, funded or partially funded by new sources of federal revenue, would provide additional assurance that the federal government's commitment to public broadcasting is long term and that federal funds for this purpose would be available on a more predictable basis. For these same reasons, and because the trust fund mechanism is also likely, over the long term to generate interest, the sufficiency of federal funds would be made more likely.

The increased insulation, predictability and sufficiency of federal funds made possible by the creation of a special trust fund would provide, I believe, additional incentives for non-federal funders to increase their financial commitments to public broadcasting's. Why shouldn't local and national corporate underwriters and state and local governments be motivated to increase their contributions in the light of a larger, better insulated and more predictable financial commitment by the federal government? Logic and experience would have it no other way. Moreover, given an environment improved in all of the foregoing respects, public broadcasters would also have greater incentives to help meet their long-term financial needs. The result would be better foward planning, greater financial commitment to program production and physical plant and, in the end, more efficient operation and higher quality programming.

Finally, the creation of a trust fund would improve public broadcasting's diversity in several important ways. Additional incentives for non-federal funding should result in a greater variety of program funders and, ultimately, of programs available for broadcast. Further, the availability of more money from a greater variety of sources should stimulate producers, including local public radio and television stations, to make a greater commitment to a greater variety of programs. The enhancement of local stations' ability to produce locally-oriented programs would be a key benefit because local stations, each with a strong local identity and community connection, remain the keystone of the public broadcasting system.

III. A TRANSFER FEE, COUPLED WITH ADOPTION OF A TWO-STAGE LICENSE RENEWAL PROCESS, IS THE BEST LEGISLATIVE APPROACH

For all these reasons, I believe that a Public Broadcasting Trust Fund is a good idea whose time has come. Even if there were general agreement on that subject, however, three important questions remain. First, from what source or sources should a trust fund come? Second, should trust funds be targeted at amounts that would be fully appropriated each year, or should an endownment be developed, the earned income from which would ultimately provide all of public broadcasting's federal financial support? Third, what sort of legislative package is both fair and realistic?

All else being equal, I would favor the establishment of a public broadcasting trust fund financed out of the general treasury. Unhappily, however, in this as in most other cases, all else is not equal. The size and potentially destructive effects of the United States' combined annual budget deficit overshadow all of our other domestic problems. Until drastically reduced, the deficit prevents, as a practical matter, proper attention being given to the reduction of drug use, the fight against AIDS, better education, broader job training and the myriad other causes worthy of increased federal funding, including public broadcasting. So as not to contribute to the deficit, the creation of a public broadcasting trust fund should be financed, at least in part, by new revenue sources.

Reasonable fees for the transfer and assignment of licensed stations, coupled with a long overdue change in broadcast license renewal procedures, seems to be the fairest and most practical formula for finding adequate sources of new revenue for a public broadcasting trust fund.

There are several means for this. While it would be fair, in a sense, to collect new trust fund revenues from an excise tax on the sale of home radio and television sets, such a tax might generate no more revenue and, in my layman's view, be more inflationary than a reasonabie fee on the sale of licensed facilities. A transfer fee is also logical, since it exacts a price for the commercial use of the spectrum in order to support the spectrum's non-commercial use.

Further, the size of the fees which S. 1935 would impose seem reasonable, both in their impact on broadcasters and in terms of the amount of revenue likely to be generated. The goal of this legislation, subject to confirmation by further economic analysis, should be an endowment for public broadcasting, the interest from which would provide sufficient annual funding on a permanent basis. This would insure an optimum combination of insulation, sufficiency and predictability.

It is not fair or reasonable, however, to impose a new fee on broadcasters without removing an existing unreasonable burden from their shoulders. This burden is embodied in FCC rules requiring a comparative renewal hearing in which a licensed broadcaster's past operating record is compared with the paper promises of a new applicant. This is neither the time nor the place for a thorough discussion of this subject. Suffice it to say that current comparative renewal procedures impose costs and inefficiencies on broadcast licensees far in excess of any real public interest benefits. At best, they stimulate short-term results satisfying to industry critics but of little or no long-term value. At worst, they promote deception by new applicants of a kind which would disqualify a licensed broadcaster doing the same thing.

Thus, the adoption of a license transfer fee should be balanced by the creation of a two-stage renewal process under which new applicants may seek a licensed facility only if the incumbent broadcaster is first found to be disqualified.

Such a quid pro quo is fair; the elimination of one burden for the assumption of another. This exchange also makes political sense. Why shouldn't broadcasters support a bill which many people think imposes a fair burden if the bill also eliminate a process which many think is anachronistic, unfair and counterproductive?

Most importantly, the legal concept of the broadcaster as a public trustee, embodied in more than fifty years of communications law and policy, is currently in a delicate balance. The imposition of a fee for the exercise of one of broadcasters' fundamental property rights would weaken, to some degree, the public trustee rationale unless it is coupled with the removal of a comparable burden. In order to retain the public trustee concept, which I strongly endorse, it is important not to tip the scales in the wrong direction.

I sum, Mr. Chairman, I support the legislative goal of a Public Broadcast Trust Fund without reservation. With the addition suggested, I would also support the transfer tax as proposed in S. 1935. I thank you and your Senate colleagues for your continuing unwavering support for public broadcasting, and I congratulate you for seeking now to further strengthen the system that is a vibrant and vital part of our society.

Senator INOUYE. Thank you very much.

Ms. Burns.

STATEMENT OF RED BURNS, CHAIR, INTERACTIVE TELECOMMUNICATIONS PROGRAM, TISCH SCHOOL OF THE ARTS

Ms. BURNS. My name is Red Burns, and I was a member of the Carnegie Commission on the Future of Public Broadcasting from 1977 to 1979.

I really want to speak here about the philosophy and the point of view that guided the deliberations of the Commission and the values that formed the underpinnings of our approach. Independence and long-term funding of the public broadcasting system are critical to its ability to play the role its founders intended.

We believed that there were two main goals in an ideal public broadcasting system that can be realized by careful design of both structure and finance. They were insulation from political influence and long-term substantial funding.

This second Carnegie Commission met for almost two years. We heard testimony from thousands of people from both inside and outside the public broadcasting system, Americans representing many walks of life who cared passionately about the system.

From the report, "The future greatness of America lies in the strength of this kind of diversity of religious, racial or cultural heritage. Public broadcasting must create an enterprise that attracts their continuing administration and support if it is to survive and flourish.

"The revelation of diversity will not please some; notably, the book burners and the dogmatists among us. It will startle and anger others, as well it should. But we have discovered in our own time that anger yields to an understanding. America needs perhaps even more than healing a sense of understanding, something that is impossible if we each continue to wall ourselves within the corner of society we find safe, appealing and comfortable."

Public television has done an extraordinary job, given its constraints. It needs the freedom to explore ideas that may not be popular. It has to dig deeper to escape hidden prejudices.

We Americans have a tendency to believe that we are the best and the brightest, and it is that self-adulation and complacency which do us a disservice. We need programming that has to sharpen our senses and our sensibilities.

If public broadcasting is tied to political or financial pressure, we are going to have programming that is inoffensive. We will not have any searching documentaries about our problems.

On the issue of long-term insulated funding, we were also in agreement. To quote the report, "Public broadcasting as a delicate journalistic and creative cannot be regarded as part of the government even though it uses Federal and State funds to accomplish its goals.

"If government finances broadcasting, it must do so in a way that provides a sustained flow of funds with as little political pressure as the practical workings of a democratic society can guarantee. The objective is difficult to design and even more difficult to achieve, as history has proven.

"Public broadcasting must have reliable sources of funding that do not undergo major cuts whenever the political power changes in the country. Its independence must be enhanced, not limited, by the way the funds are disbursed. There should be a virtually automatic arrangement for the system to receive its funds with a review of support levels on a predictable multiyear basis.

"Insulated funding is necessary from an operating point of view as well. Program development in both radio and television has not been satisfactory, largely because the system has been unable to plan and develop major projects on a multi-year basis. Lack of financial stability leads inevitably to crisis management, not planning, with attendant gaps in the program service and higher performance costs."

There has been a lot of talk about American corporation support, and that certainly has been a strength. But everybody understands the corporations avoid controversy and will not give money for programs that expose serious and uncomfortable subjects.

There are exceptions, of course, such as the ATT support of MacNeil-Lehrer, but as we heard this morning, that support seems to be disappearing.

On the whole, corporate funders are usually more interested in the public relations aspect of their support, and that translates into a lack of unconventional, experimental and untested programs.

In addition, to gear public broadcasting to Congressional approval, forces it to have the psychology of a government lobbyist rather than the perspective of the broadcaster. It sees Congress out of the corner of its eye as an audience for its every programming decision, and its leaders always have to calculate what the decision will cause in the next funding cycle.

The short leash to the Congressional budget process is one of the major factors that creates bland programming. Producers complain about delays, and their complaints are justified. It is easier for public broadcasting not to make decisions because of political vagaries, and projects with bite usually get postponed for years.

The Carnegie Commission recommended a spectrum fee is based on the theory of charging for the use of a scarce public resource. We have heard this morning the model of the fees charged by the Federal Government for mining, grazing, timber and oil exploration rights on public property.

This idea is similar in intent to the proposed legislation for transfer fee. Its purpose was to find an insulated, substantial, stable, ongoing source. The Commission was unanimous in its agreement that long-term stable funding free from political winds was crucial.

While the proposed legislation differs from our spectrum fee in that the spectrum fee would apply to all users of the electromagnetic spectrum, perhaps the larger point is that the Commission endorsed substantial government funding above and beyond such fees.

In its report, the Commission acknowledged that money alone would not solve the problem. We also argued for a reorganization of the current public broadcasting system. We understood:

The fundamental dilemma that has revealed itself over and over again in public broadcasting's brief history and led to the empanelment of this Commission: how can public broadcasting be organized so that sensitive judgments can be freely made and creative activity freely carried out without destructive quarreling over whether the system is subservient to a variety of powerful forces including the government?

The Commission was concerned about the ways the presidential appointments system had been used in practice to politicize the system. While the Commission, after examining other alternatives, favoured the presidential appointments technique we recommended profound changes in the structure and nature of those appointments. We recommended that the Corporation for Public Broadcasting be replaced by a new entity called the Public Telecommunications Trust. The Trust, a non-governmental, non-profit corporation was to be the principal fiduciary agent for the entire system. It was to be governed by nine presidentally appointed trustees with staggered, non-renewable, nine-year terms. We recommended that the President make his selection from a list of names presented to him by a panel, chaired by the Librarian of Congress, drawn from the governmental institutions devoted to the arts, the sciences, the humanities and the preservation of our heritage as well as two representatives drawn from the system.

The Commission also wanted to separate programming decisions from policy and finance decisions made by the Public Telecommunications Trust. To separate the encouragement of creativity from the influences of politics we recommended a new administrative structure, the Program Services Endowment—the programming entity. The endowment would have the sole objective of supporting creative excellence. This second statutory organization would be a highly insulated, semi-autonomous division of the Public Telecommunications Trust. The Endowment would be governed by a 15-member board appointed by the trustees of the Public Telecommunications Trust, from candidates nominated by the board itself. Three members of the board would come from the public telecommunications communities. All board members would serve staggered terms of three years, renewable once. Nominees for the initial Endowment Board would be proposed to the trustees by the nominating panel, with the Chief Executive Officer of the Endowment chosen by the Endowment's Board. Behind the recommendation was the desire to create a safe place for nurturing creative activity. We felt strongly that there must be one place in the system that had the freedom to take risks.

We said:

The Commission is obviously not advocating the establishment of any kind of ministry of culture or propaganda machine that seeks "consensus" by the imposition of idealogical orthodoxy. Our vision of an independent and innovative public telecommunications institution is the antithesis of the monolithic outlook of all forms of totalitarism.

We see, instead, the reverent and the rude, the disciplined and the rambunctious—a celebration of American freedom in all its unpredictable varieties.

We remember the Egyptians for the pyramids, and the Greeks for their graceful stone temples. How shall Americans be remembered? As exporters of sensationalism and salaciousness? Or as builders of magical electronic tabernacles that can in an instant erase the limitations of time and geography, and made us into one people?

The choice is in our hands and the time is now.

Senator Inouye. Thank you very much, Ms. Burns.

Senator Packwood.

Senator Packwood. Mr. Henry, in your testimony you define insulation, and you say insulation means protection of public broadcasting program producers and distributors against the undue influence of funding sources; in this case, the Federal Government.

Let me ask you the same question I asked Mr. Friendly. Would you like us not only to set up a trust fund but remove the annual appropriations to the trust fund? That is what we do with other trust funds, so that the money goes directly from the source, in this case the tax on broadcasters, to the trust fund without any government intervention.

Mr. HENRY. I think my answer would be about the same as his, which is it is an interesting idea, and I would have to think about it.

Also, I have accepted, at least for now, the provisions of this bill that indicate that in order for the money to be spent out of the trust fund that there would be an appropriation.

Senator PACKWOOD. Basically, what you want is public funding in the trust fund with as little influence from elected public officials as possible?

Mr. HENRY. That is correct, certainly.

Senator PACKWOOD. It is an unusual reverse on public accountability, because normally other organizations are accountable to us when we take the public's money and say, here, spend it on defense, spend it on children, spend it on education, spend it on whatever.

Mr. HENRY. Yes, but you do have here the additional feature that I suppose is unique; that is, you are talking about a realm of ideas and artistic creation, artistic freedom and, therefore, there is a difference.

Personally, however, at least for now, I accept the provisions of this bill which continue to make the expenditure of funds from the trust fund, or at least the contributions to the trust fund, subject to annual appropriation.

Senator PACKWOOD. Mr. Geller, let me ask you a question. You were talking about the station in Jackson, Mississippi. It is the one, I think, that Mr. Friendly referred to that would not put Martin Luther King on and blacked out any reporting of Brown versus the Board of Education.

Mr. GELLER. It did more than that. During the burning issue on integrating the University at Oxford, it put on the White Citizens Council and it editorialized against but it would not put on the blacks even though they were 45 percent of the population.

Senator PACKWOOD. Now, I may have misquoted you. You said something like if you have this kind of a system, you could have a union station, and then you went on and listed some others.

By a union station, you mean a union might get the license, and they would broadcast all day long would be the union side of whatever disputes are going on?

Mr. GELLER. Yes. What I am saying is that it is a different scheme. It is like the print scheme or a pamphlet. It is a perfectly logical scheme, but it is not the one Congress chose.

The scheme that we get if you eliminate the fairness doctrine is propaganda stations. There is nothing wrong with that. I am not being pejorative. That is robust wide open debate if you conjugate it that way.

Senator PACKWOOD. In other words, you do not think that is so bad; you just say that is not the system we have chosen.

Mr. GELLER. That is not the scheme. The scheme that Congress chose was, "We give the frequency to you free, but you volunteer to serve the public interest and you are a fiduciary for the entire community."

When you take the channel in Jackson, Mississippi as one of the two VHF stations, you pledge that you are not just going to put on the views with which you agree, for which you get money, but that you will be a fiduciary.

Senator PACKWOOD. The same would be true if it is a radio station. We are not going to give it to a union and let them broadcast union propaganda all day.

Mr. GELLER. You will remember that I have testified before that it would not be a bad idea with 10,000 stations to deregulate, to say that the radio station can do what it wants, take the 2% too, and use the $140 million for public radio. But Congress needs to do that, and all I am saying to you, Senator, is that if Mr. Fritts and others get their way and the fairness doctrine goes, the entire act crumbles. Equal time goes.

The Supreme Court in Red Lion said——

Senator PACKWOOD. You are making me more enthusiastic all the time. In other words, somebody might broadcast classical music all day.

Mr. GELLER. That would be fine.

Senator PACKWOOD. That would not be in the public interest at all, would it?

Mr. GELLER. But what I am saying to you, though, is, let us recognize what we are talking about here. Mr. Fritts seems to say, "Well, all I want to do is get rid of the fairness doctrine and we will keep the rest of it."

You will not keep the rest of it. Equal time will go. Reasonable access will go. The entire thing will go.

Senator PACKWOOD. That is right.

Mr. GELLER. But he cannot have it both ways. When he comes here and says—it is just a surgical strike. Just take that out, and it will be fine. It is not. It is the whole act.

Senator PACKWOOD. Thank you, Mr. Chairman.

Mr. HENRY. Mr. Chairman, could I add something? Senator Packwood inferred, as Mr. Friendly did before, that the FCC was too chicken to vote for revocation; or something like that. He was absolutely accurate about that.

There were, however, two dissenting votes in that case—mine and Commissioner Cox's. And Mr. Geller was the general counsel at that point. And we did vote very much against the majority, and the decision was appealed. And I would like to think that because of the dissent that I wrote, in part, at least, it was reversed.

Mr. GELLER. It was a very powerful dissent. May I just add one thing?

Mr. HENRY. You probably helped write it.

Mr. GELLER. The question you asked Mr. Henry, I would just like to answer that I think it would be a good idea if you let it go into the trust fund directly.

I think Congress has the responsibility in that every five years, or whatever appropriate time, you ought to review and see, is it doing the job for children?

Senator PACKWOOD. I did not mean to prolong this, and I know the last panel wants to get on. But the argument for a trust fund is the same argument made by every other group, whether it is handicapped children or defense.

The single distinction I think you can maybe make for broadcasting is that this idea is not just about predictability.

The Defense Department would love to have a trust fund, because they would legitimately make the argument, we would authorize a weapons system and we say "build it in five years," and they, okay, build it in five years.

Then about the third year out we say, "gee, we cannot afford to do it all in five years, we want to stretch it out for seven years." And they say, "well, why did you not tell us that to begin with. It is going to cost us more to stretch it out." And we say, "we have not got the money now."

Why did you not put our money in a trust fund? We could have spent it more wisely. Same argument in terms of predictability.

Your argument is a slightly different one. It is an isolation argument and there may be some validity to that where you do not want to isolate defense. Apparently we do not want to isolate handicapped children either, and they are just going to have to take their chances year by year by year without predictability.

Mr. GELLER. But it is a mass media, it does need insulation. I agree with what Mr. Henry said.

I am just saying, Congress also needs to review it. Nothing is forever. And at some point you might look and say, "My, there have been so many changes that we want to do the following thing."

I am only saying, do it at long periods, and that would satisfy both purposes and be a proper balance.

Senator PACKWOOD. Thank you, Mr. Chairman.

Senator INOUYE. Thank you. It has been argued by those opposed to this measure that most stations are not sold or transferred, and the ones that are transferred are usually from the smaller companies. And therefore it would be an unfair burden to place upon small enterprises. Do you have any arguments on that?

Mr. HENRY. Yes, sir. I think probably numerically that may be true. But again, and I do not know what the statistics would show, but I would suspect that an analysis would show that the values, the values involved overall, are attributable in substantial amount to the larger stations.

Since the FCC several years ago increased the number of stations that an individual could own from seven to 12, both in AM-FM and television, the rate of the exchange of stations rose considerably, as did the values.

A number of those stations were quite large. There may now be a diminishment in the number of large stations that are being sold. But I suspect the cycle will start again, and certainly at some point the major stations will also be sold.

That is not true with respect necessarily to the network stations, because they have the biggest and the best already. But that is the one exception that I think you could count on.

Mr. GELLER. I would add to that what Senator Hollings said, that it is just the cost of doing business, and they pay the lawyer, they have to pay here.

Even if you did not do that, if you decided to give them a further break and make the fee 1 percent, you ought to use 2 percent as to the 10 percent that you heard this morning are generating the 80 percent of the revenues. And that if you do that, you are picking up the bulk of what you need.

Ms. **Burns**. I would also share that with both of my colleagues. The fact that the numbers do not work at this minute does not mean they are not going to work later.

Senator **Inouye**. Opponents have also argued that commercial stations have an obligation or public interest, and therefore should not be discriminated against.

My question is, are there risks to a licensee that the FCC will revoke the license for failure to serve the public interest?

Mr. **Geller**. Not much. The broadcaster only sends a postcard in now today. And that postcard, of course, gives no programming information at all to the FCC.

The FCC is dependent entirely upon the public. The public is out at shopping malls. They are not running down to their station and monitoring their station and trying to find out what did the station do.

So the result is that they really have a base on balls under this. It is the duty of the FCC, and was the duty up until postcard renewal, to look and see whether the station had rendered overall public service. And that duty is just breached now, and therefore I would say it is a riskless business now.

Mr. **Henry**. Mr. Chairman, I have had the advantage now of seeing it from both sides of the table, so to speak. Both when I was on the FCC and now that I am in the private practice.

You ask, is the FCC a threat? I guess one answer is that it depends on which FCC. But in addition, the commercial broadcasters do take seriously, at least in concept, the public interest requirement.

They do so because they never know when somebody might claim that they are stepping over the line. There are instances every day in which one broadcaster or another takes action or fails to take action because of the threat of regulatory intervention.

So while the threat of the revocation of a license is minimal, there is an effect felt by the mere existence of the Commission with the laws on the books the way they are now.

Senator **Inouye**. Ms. Burns, what was Carnegie Commission's rationale for recommending the spectrum fee?

Ms. **Burns**. Well, it was felt that, the spectrum fee recommendation was for all users of the spectrum fee.

It differs slightly from this proposed legislation in that everybody who used the spectrum ought to contribute to public broadcasting—if you take as a given, and I am assuming we are, at the public broadcasting is a national resource, we need it, we then go onto the next step obviously of how to fund it.

And the feeling was, and we looked at many, many, many options, that the spectrum fee gave us a broad enough base. But we also felt that there had to be diverse funding, that it ought to come from many sources, because we were particularly concerned with political insulation.

So we had a piece from the spectrum fee and we looked at various other sources, including state government and corporate funders.

Senator **Inouye**. And the total fee would be turned over to public broadcasting?

Ms. **Burns**. Right.

Senator INOUYE. So it is not a regulatory fee?

Ms. BURNS. No.

Senator INOUYE. Why did the Commission feel that it would need funding in excess of that raised by the spectrum fee it proposed?

Ms. BURNS. Nobody had come up yet with a particular formula for the spectrum fee. We are talking now 10 years ago, and as we heard this morning, pricing has just sort of blown away. It is a lot of money.

And we felt that it ought not to come in any event from one place, the spectrum fee, but as I said earlier that we felt diversity was very important, that it had to come from lots of sources. Accountability would then be available in all sources.

Senator INOUYE. What about the argument that public broadcasting and commercial broadcasting compete for the same audience, and to require the commercial to, in some way, subsidize public broadcasting, is really giving unfair advantage?

Ms. BURNS. I guess if people insist on using measurements as they do, I cannot answer that question.

All I can say is that I would hope that public broadcasting would be such a different animal than commercial broadcasting that I cannot see that there is competition. I see that they are complementary.

Senator INOUYE. Thank you very much for your assistance.

Our second panel consists of the President of the National Association of Broadcasters, Mr. Edward O. Fritts; the Chief Operating Officer of Graphic Scanning Corporation of New Jersey, Mr. Richard Sherwin; and the Manager of the Horry Telephone Cooperative, Mr. Curley Huggins of South Carolina. Gentlemen, welcome. Mr. Fritts?

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. FRITTS. Thank you, Mr. Chairman, and good afternoon. We welcome this opportunity to provide the NAB views on S. 1935, the Communications Transfer Fee Act.

As you know, last year we opposed similar legislation. This hearing, of course, focuses on a recent staff draft of S. 1935, which drops the fairness provisions from the original legislation.

Even with these fairness sections deleted, however, NAB remains strongly opposed to the legislation. We believe that it would undermine the foundation of public broadcasting, irreparably damage relationships between commercial and public broadcasters, substantially alter the basic system of broadcast regulation that has served this Nation well for more than 50 years, and impose an unfair tax on commercial broadcasters. In short, we believe the damage caused by this bill would far outweigh whatever revenues the tax would generate.

These objections are detailed in my written testimony, which I understand will be included in full in the record for today. In the brief time available, I would like to focus on two major points.

One, the subcommittee must clearly recognize that this legislation has the potential to permanently fracture relationships between commercial and public broadcasters. While the bill has many other defects, this is perhaps its most unfortunate aspect.

Commercial and public broadcasters can be viewed in some respects as competitors, but in many more important ways we are supportive and complementary services. NAB continues to support stable, long-term Federal funding for public broadcasting.

At the local level, commercial broadcasters provide a broad range of tangibie support to their public counterparts, including free or reduced price space on their towers, donations and loans of equipment, loans of on-air and off-air talent for fundraisers, program donations and underwriting, and advertising and promotional assistance.

If S. 1935 passes, it is inevitable that the state of affairs represented by these local examples will end, a circumstance over which those of us here in Washington will have no control.

First, this trust fund will secure in a somewhat insecure way merely the Federal funding portion of public broadcasting, which is now only about 16 percent of the total base of support. The bill can jeopardize a substantial portion of the rest of the funding mix.

Secondly, public stations will lose much if not all of the direct support they receive from commercial stations, a loss that in fact is difficult to quantity.

And finally, no amount of money will make up for the loss of the spirit of cooperation that presently exists between public and commercial broadcasters.

My second major point today is that before this subcommittee decides upon any form of spectrum charge on commercial broadcasters, it should recognize that in pursuing its revenue goals, it threatens to reverse more than a half century of public communications policy as established by Congress.

Two critical factors distinguish commercial broadcasters from other spectrum users. First, we provide content, while other users simply act as conduits.

Second, we provide free service to the public. We embrace unique public interest obligations as a condition of our licenses. This is what sets us apart, not merely from other users of the spectrum, but from other businesses in general. It is the essence of why we should not be subjected to an additional fee for our use of the spectrum.

For nearly six decades, the regulatory equation that Congress selected to build our broadcasting system and to govern our stations demands that when we receive our licenses, we pay for them, albeit indirectly.

This payment takes many forms. We pay through our specific statutory and regulatory obligations to provide programming to our local communities that responds to the needs and interests of those communities.

The payment also encompasses our statutory requirements in the political arena, including providing reasonable access, equal opportunities, and the lowest unit charges.

It includes other unique obligations, such as the less well known emergency broadcast system. No other spectrum user has any similar obligation. Furthermore, our voluntary public service efforts should not go unrecognized.

Early figures for 1987 show that the Ad Council alone has received from radio and television broadcasters more than $825 million in air time. We think this represents less than a third of the total public service announcements run by network and local levels.

Finally, our payment encompasses the tenet that all of the content we provide, news, entertainment, weather, sports, public affairs, and public service, all of this is received by the public free of charge.

In contrast, newspaper readers paid $8 billion in 1987 to buy their papers, and cable subscribers paid $11.4 billion for their cable service subscriptions alone last year. Unlike virtually every other spectrum user, we send no bills to the consumer.

By any standard, the public gets full value from the free over-the-air system of broadcasting. Therefore, we believe it is inappropriate to charge an additional tax or fee on commercial broadcasters for licensing.

In conclusion, we strongly oppose the legislation. We hope the subcommittee will reject this approach and will seek other methods of funding public broadcasting that remain true to public broadcasting's roots, and that maintain the structure of the broadcasting system that we believe is the best in the world, and that comport with proper tax policy and procedure.

We stand willing to assist the subcommittee in that effort. I would be happy to answer any questions at the appropriate time.

[The statement follows:]

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF BROADCASTERS

Thank you for inviting me to testify today on S. 1935, the Communications Transfer Fee Act. My name is Edward O. Fritts, and I am President and Chief Executive Officer of the National Association of Broadcasters. NAB represents over 5000 radio stations, 950 television stations and all of the major commercial networks.

NAB welcomes this opportunity to provide our views on these important issues. As you know, last year we opposed legislative provisions similar to S. 1935 that were offered to the Budget Reconciliation bill. We understand that the sponsors of S. 1935 have directed their staff to make certain revisions to the bil[illegible]hat the focus of this hearing is that staff draft. The primary distinction between S. 1935 as originally introduced and the staff draft is the deletion of the provisions relating to codification of the fairness doctrine.

NAB, of course, is a long-time foe of the fairness doctrine, and we applaud the sponsors for deleting those provisions. Even with those changes, however, NAB remains strongly opposed to this legislation. We believe that it would undermine the foundation of public broadcasting, irreparably damage relationships between commercial and public broadcasters, substantially alter the basic system of broadcast regulation that has served the nation well for more than 50 years, and impose an unfair tax on commercial broadcasters. In short, we believe that the harms caused by this bill would far outweigh whatever revenues the tax would generate.

I. A TRUST FUND SUPPORTED BY A TRANSFER TAX WOULD NOT BE IN THE BEST INTERESTS OF PUBLIC BROADCASTING

NAB has long supported public broadcasting. We agree with the goal of the sponsors of S. 1935, which is that public broadcasting requires a stable source of long-term funding to enable it to fulfill the role for which it was established. We do not oppose the concept of a trust fund for public broadcasting, if Congress determines that this is the best means by which that goal can be achieved. However, we must strongly object to a trust fund for public broadcasting that is funded by taxes imposed on commercial broadcasters. Such a trust fund would be contrary to the foundation upon which public broadcasting is built, inequitable, and harmful to relationships between commercial and public broadcasters.

A. The transfer tax funding mechanism violates the premise that support for public broadcasting should be broadly based

Public broadcasting is built upon the premise that its funding should come from many diverse sources, spread across the general public. Beginning with the seminal report of the first Carnegie Commission in 1967, virtually every governmental and non-governmental group that has examined public broadcasting has concluded that its support should come from the general public, not narrowly-based sources. This breadth of support is required to insulate public broadcasting from outside control or pressures, and to permit it to be independent from any particular influence or group, including the federal government. (A more extensive review of this topic is provided in our recent white paper entitled "Federal Funding of public Broadcasting.")

The utilization of a transfer tax on the sale of communications licenses as the primary funding mechanism of a federal trust fund for public broadcasting would be a radical departure from this long-established tenet. The major source, perhaps the sole source, of the federal component of funding for public broadcasting would come not from general revenues, but from a relatively narrow segment of society. NAB suggests that if public broadcasting is truly to be of and for the public, it should be broadly supported by the general public, its intended beneficiary. Not only is it inequitable and contrary to public policy to tax a narrow segment to fund a program that benefits society as a whole, but such a program would be contrary to the basic notion of what public broadcasting is to be.

B. It is inequitable to tax commercial broadcasters to support their public competitors

Just as it is inequitable to tax a small group to benefit all of society, it is similarly inequitable to tax one group to support the competitors of that group. While public broadcasting and commercial broadcasting are in many respects complementary services, in other important respects they are competitors. Support for public broadcasting should not be at the expense of commercial broadcasters.

In the most basic sense, public and commercial broadcasters compete for the time and attention of their potential audiences. The success of a commercial station, of course, is based directly on the size of the audience its programming attracts. Audience size also is important to public stations, for it relates to potential revenue from viewer donations and it is a means by which stations can measure the quality and appeal of their programs. Thus, commercial and public stations compete with each other, and with a growing number of other programming services, for audiences.

Public and commercial broadcasters compete with each other in many other ways, as well. As with every industry, the pool of talented communications personnel is limited, and commercial and public broadcasters must compete to attract capable employees. Quality programming also is limited, and commercial broadcasters increasingly find themselves bidding against public stations for the same programming. Finally, with the advent of "enhanced underwriting" by public broadcasting, commercial broadcasters also compete with public stations for advertising revenues.

Given the extent to which public broadcasters have become competitors of commercial broadcasters, it would be unfair to directly tax the commercial side to fund the public side.

C. The transfer tax would irreparably harm relationships between commercial and public broadcasters

Perhaps the most unfortunate aspect of a trust fund supported by a tax on commercial broadcasters is that it would severely damage relationships between public and commercial broadcasters at all levels. Such strains were evident during the battle over the earlier version of S. 1935 last year. If this proposal is signed into law, the Committee should recognize that the current cooperative state between commercial and public broadcasters could be permanently ended.

While I have earlier described public and commercial broadcasters as competitors in one sense, in other important ways our two industries have worked together closely and cooperatively. For example, NAB routinely works with its counterparts in public radio and television on common legislative and regulatory goals. NAB also has supported public broadcasting's efforts to obtain appropriate funding, and on several occasions I personally have testified before Congressional committees on public broadcasting's behalf.

At the local level, commercial broadcasters have worked with their public counterparts in numerous ways. A 1985 survey of commercial stations demonstrated the breadth of the tangible methods by which commercial stations had provided support for public broadcasting. For example, many commercial stations aid public stations in their auctions or other fundraising activities, including through loans of on-air and off-air personnel, and through promotional and other publicity activities. Commercial stations also provide free or reduced-price space for public broadcasters on their towers, an donate equipment to public stations, or loan or rent it to them at reduced cost. Stations also donate programs or help to underwrite them, and provide promotional advertising about public programs at reduced rates.

If legislation like S. 1935 passes, and commercial broadcasters are taxed directly to fund public broadcasting, it is inevitable that this voluntary assistance would diminish rapidly. It is difficult to quantify whether the revenues generated by the transfer tax would make up for the loss of these supportive efforts by commercial stations. More serious than any net economic impact, however, would be the loss of this spirit of cooperation between commercial and public stations.

II. SPECTRUM PAYMENTS IMPOSED ON COMMERCIAL BROADCASTERS ARE NOT JUSTIFIED

S. 1935 should not be examined merely with respect to its impact on public broadcasting. This legislation also has the potential to radically restructure the entire framework of commercial broadcasting law and policy.

Senator Hollings, in introducing S. 1935, described the transfer tax as one form of charge for use of the spectrum. He stated that "(i)t is long past the time that we collect the value of the public resource known as the radio spectrum. For too long, the public airwaves—worth about $500 billion—have been given away for free." Before addressing NAB's specific objections to the transfer tax, I wish to explain why NAB believes no form of spectrum payment for commercial broadcasting is appropriate.

The threshold issue is whether the broadcast spectrum is the type of federal asset for which charges should be assessed. Spectrum payments for commercial broadcasters have been likened to the fees charged to ranchers who graze their cattle on federal lands, or to offshore oil leases. Such analogies are inept.

The broadcast spectrum is an incorporal asset with no intrinsic worth. These frequencies have value only because broadcasters have invested considerable sums of money at the transmission end for equipment and programming, and individual consumers have invested smaller sums at the receiving end for radio sets or televisions.

This spectrum is infinitely renewable—unlike federal grasslands or forests, the spectrum never is exhausted, eroded or altered in any way when broadcasters send their signals through the "ether." It does not make sense to extract a payment for federal "property" which has absolutely no value before a signal is transmitted through it, and which would have no value if the station ceased to operate.

It is important to remember that when the federal government established our system of broadcasting, it made a conscious decision to rely upon a foundation of privately owned broadcast stations, licensed by the government, but supported by advertising. That structure, later supplemented by the public broadcasting system, remains to this day. Rather than establish a federally owned, constructed, operated and programmed mechanism, this country instead turned to private enterprise to build the world's finest and most comprehensive broadcasting system. (The benefits of our system are examined more fully in our most recent white paper, entitled "Broadcasting—Our Foundation Revisited."

To be sure, an organized broadcasting system would be difficult to sustain without the technical regulations and licensing process administered by the Federal Communications Commission, as was demonstrated by the infancy of radio communications prior to the Radio Act of 1926. That fact, however, suggests most that the federal government should seek reimbursement from broadcasters only for those regulatory expenses. The government already is doing so, through the recently enacted "cost of regulation" fee schedule administered by the FCC, which was developed by this Committee.

NAB did not oppose that fee schedule, and broadcasters willingly bear their fair share of these regulatory reimbursements. While this fee schedule from time to time may need to be fine-tuned to ensure that all appropriate regulatory costs are recaptured, this does not suggest that totally unrelated spectrum payments for commercial broadcasters are warranted.

A. Broadcasters have unique public interest obligations attached to their licenses

The critical distinction between broadcasting and other commercial uses of the spectrum is that broadcasting provides free service to the public. We embrace unique public interest obligations as a condition of our licenses when we receive them from the federal government. This is what sets us apart from other users of the spectrum, and indeed, from other businesses. It is the essence of why commercial broadcasters should not be subjected to an additional fee for their use of the spectrum.

Under the regulatory equation that has been in place for more than 50 years, broadcasters receive their licenses from the federal government essentially for free. In return, broadcasters have statutory and regulatory programming obligations. Broadcasters, in effect, "pay" for their licenses through their specific responsibilities to provide programming that addresses the needs and interests of their local communities. Furthermore, broadcasters have other unique obligations attached to their licenses in the political area, including the statutory requirements to provide reasonable access to federal candidates, equal opportunities for candidates, and special rates to candidates for their airtime.

Broadcasters' public interest activities go well beyond these well-recognized obligations. One of the lesser-known public responsibilities of broadcasters is emergency broadcasting acitvities. All broadcasters are required to participate in the Emergency Broadcasting System, which functions both as an alerting mechanism for national and local emergencies, and as a means of allowing expeditious Presidential communications with the public during such emergencies.

On the local level, EBS plays an almost daily role in helping citizens protect their lives and property. During 1987, stations reported 791 uses of EBS, and the actual number of uses probably is much higher. Local broadcasters, through EBS, serve their communities during times of special needs, such as floods, snowstorms, tornados, fires, chemical spills, nuclear accidents and other situations in which emergency action is required.

Broadcasters also serve the public through free broadcasts of public service announcements. For example, the free time provided to the public service campaigns conducted by the Advertising Council alone is staggering. Preliminary figures for 1987 reveal that the value of the airtime donated to Advertising Council spots by radio and television totalled more than $825 million. Local radio stations aired more than 8.4 million Council spots, while local television stations aired more than 1.3 million spots. These Council spots represent only about a third of the total number of public service spots that network and local broadcasters run. They do not include, for example, the public service campaigns that NAB itself is sponsoring, such as our members' efforts against drug and alcohol abuse, announcements to increase voter participation, and messages to promote child safety.

Finally, broadcasters can be said to "pay" for their licenses through the general proposition that all commercial broadcast programming—news, public affairs, sports, weather, entertainment, etc.—is provided to the public free of charge. In contrast, newspaper readers paid $8 billion for their daily and Sunday newspapers during 1987 alone, and cable subscribers paid $11.4 billion on cable programming that year.

Free over-the-air broadcasting is a service so basic and long-standing that it now is treated as a given, like air, sunlight, or gravity. Perhaps viewers and listeners have become so accustomed to having virtually instant access to a world of information and entertainment—with only a flip of a switch or turn of a knob—that they never pause to think how it all happens. Maybe only our parents, or our grandparents, can recall the magic of receiving signals out of thin air with a crude crystal radio set, or the excitement caused by the arrival of the first television set in the neighborhood. Broadcasting is such a part of our daily lives that its true value is taken for granted.

Viewed from another perspective, however, consider the uproar that would result if network and local news, the Olympics, Redskins games, the World Series, the Cosby Show, and every imaginable taste in music simply vanished, or if these and many more programs suddenly were available only through subscription services like cable. It is clear that while commercial broadcasters use—and profit from—the public's airwaves, by any measurement the public gets fully value in return.

Commercial radio and television broadcasters send no bills to their viewers and listeners, unlike virtually every other user of the spectrum. Other, less visible license holders use the public's airwaves, too, but they also charge that public for the products or services they provide. This is true whether these licensees directly provide a communications service, such as telephony or subscription video, or a product or service that indirectly depends on use of the spectrum, such as taxi rides or pizzas delivered to the home. Telephone companies, satellite common carriers, subscription video services, paging companies, etc., all send bills to their customers, whose airwaves they have utilized.

Based on a broad examination of who uses the spectrum, for what purpose, and what they provide to the public in return for that use, it would be inappropriate to charge an additional tax on commercial broadcasters for use of the spectrum.

B. Spectrum charges would directly or indirectly undermine broadcasters' public interest obligations

NAB believes that any effort to impose spectrum fees on broadcasters (beyond the "cost of regulation" fees discussed above) inevitably would result in an erosion of the public interest concept for broadcasters, and the concomitant reduction of local broadcast programming in the public interest. Some policy makers would prefer to abandon the interest concept altogether, and treat broadcasters as no different than a variety of other sources of video or audio programming, such as videotapes, records, cable systems, etc. While NAB has worked to eliminate unnecessary government paperwork requirements and excessive oversight of programming decisions, we have not advocated an abandonment of the basic public interest concept, including the obligation of broadcasters to provide issue-responsive programming. Congressional enactment of a spectrum payment for broadcast frequencies undoubtedly would result in more of a property-like interest in a license, and an erosion of the unique public service role of over-the-air broadcasting. Such a development clearly would result in a new loss for the viewing and listening public and the nation as a whole.

It has been suggested that ownership concepts should be directly and intentionally introduced into broadcast licensing, through spectrum payment mechanisms. A number of communications theorists have suggested that broadcasters should contract, lease, or otherwise pay for their licenses. In return, virtually all non-technical regulation of broadcasting would be eliminated. Programming obligations especially would be jettisoned, including the fairness doctrine and political broadcasting requirements, and broadcasters would be free to program their stations virtually as they wished, or even to turn their facilities into subscription services. Rather than indirectly "pay'" for their licenses through their public service, broadcasters would pay for them directly, and would be entitled to treat the license, in effect, as personal property.

NAB has not embraced such proposals. At least these concepts have the virtue of presenting the public with straightforward and logical policy options—indirect payment through the traditional obligations of public service, versus direct payments in return for nearly total deregulation. S. 1935, however, clearly does not present such options. Indeed, under S. 1935, broadcasters would get the worst of both worlds—we would be obligated to pay for spectrum use, while we still would operate under the existing regulatory scheme. In fact, this legislation would add new regulations to the existing scheme.

C. Spectrum payments are thinly disguised taxes

Spectrum charges imposed on broadcasters are taxes by another name. Indeed, one justification given for spectrum payment proposals is that Congress is looking for new ways to raise revenues to reduce the deficit. That clearly is one of the purposes of S. 1935 and its antecedent. Broadcasters understandably are concerned about being subjected to a new (albeit better disguised) tax, which could be increased indefinitely at the will of Congress.

Commercial broadcasters are businesses, not non-profit entities. We need not apologize for that fact; indeed, as discussed above, private enterprise has largely built the system we have today. In fact, broadcasters cannot adequately fulfill their public interest obligations unless they are profitable.

It follows, then, that broadcasters are subject to taxation, as all businesses. We do not seek to exempt ourselves from our share of taxes, but we believe that we already do pay our fair share. Broadcasters are subject to the full range of federal, state and local taxes on our revenues, whether these revenues are obtained on an annual basis through operations, or through transfers of stations. It would not be equitable to impose new, potentially open-ended spectrum charges on broadcasters in addition to these existing taxes we already pay. Furthermore, it is not good policy-making to enact such a tax in the Commerce Committee, when clearly the expertise and jurisdiction over the complex issues of taxation reside within the Finance Committee, not the Commerce Committee.

D. Spectrum payments would undermine important ownership policies

Spectrum payments also would undermine policies implemented by Congress and the FCC to increase ownership opportunities for individuals and groups that traditionally have been underrepresented in the broadcast ownership ranks, especially women and minorities. These policies, which NAB supports, are intended to increase diversity of station ownership, and consequently the diversity of viewpoints that broadcasting provides to the public. Spectrum payments, of whatever type, would tend to increase the relative advantages enjoyed by those with "deep pockets" and those already well-represented in ownership, and would make it more difficult for the underrepresented groups to obtain or retain licenses.

III. SPECIFIC OBJECTIONS TO THE TRANSFER TAX

Beyond the genral objections that can be raised against my form of spectrum charge on commercial broadcasters, a number of specific objections lie against the transfer tax.

A. Stations already pay substantial taxes on any gains obtained in station transfers

The sponsors of S. 1935 apparently are motivated by reports of broadcast properties being transferred for substantial sums of money. In some cases, sales of properties do run well into the millions of dollars. The bill attempts to capture a portion of that value for the federal government.

It is important to recognize, however, that the federal government already is capturing a great deal of money from the owners of stations that have sold for more than their original purchase price. In such cases, broadcasters pay the current rate of up to 34% in federal taxes on capital gains realized in such transfers. In addition, broadcasters are subject to a 4% to 8% state tax rate on those same capital gains. Thus, station operators who transfer their licenses hardly can be accused of escaping taxes on those occasions, and the federal government in fact is getting substantial revenues from broadcast owners who transfer stations, in addition to the annual income taxes they pay.

The addition of a 2% to 4% tax on the full price—not merely on the gains realized—would radically increase the tax burden faced by station operators who transfer their facilities. This type of gross sales tax certainly is not justified by the mere fact that a spectrum license is involved.

B. Many broadcasters are in precarious financial situations

Of course, not every station operator is fortunate enough to realize capital gains when its facilities are transferred. This transfer tax, however, would be imposed regardless of whether there are any capital gains attributable to the stations' use of the spectrum. Therefore, it will land an especially severe blow on the many stations that are in difficult financial positions. For example, many AM radio stations and independent television stations are losing significant amounts of money, or already are in bankruptcy. Adding an additional tax on sales of these stations will add another nail in these stations' coffins, and will make continued service to the public by these stations that much more difficult.

Over half of the fulltime AM radio stations responding to an NAB survey in 1986 lost money. Given this precarious status, AM stations have been selling for extremely low prices. In fact, of 286 AM-only transfers surveyed between 1985 and 1987, the average annual appreciation rate of those stations was a negative 4%. (Radio Station Transfers: 1988, ComCapital Group.) To impose an additional 2% to 4% tax on the gross selling price of those sales would increase those losses significantly.

On the television side, the average independent station responding to the most recent NAB survey lost nearly $69,000 in 1986. Over half of those stations lost more than $1 million that year. UHF independent stations fared the worst, as the average UHF independent station lost $1.4 million in 1986.

Many stations are in financial distress when they are transferred. A study conducted by the ComCapital Group, entitled "Broadcast Station Bankruptcies and Financial Distress Sales—1985 through 1987," indicated that during those years, 35 AM-only stations, 15 FM-only stations, 18 AM-FM operations, and 7 television stations were bankrupt or financially distressed when they were transferred. An additional 58 stations thought to be in financial distress were sold.

Clearly, broadcast licenses are not the "licenses to print money" that many people assume them to be, and the asset values of broadcast licenses are not increasing so greatly as asserted. As a result, this transfer tax would be much more than a minor burden for many licensees.

C. The transfer tax is imposed on all of a broadcaster's assets

One of the most serious objections to the transfer tax on commercial stations is that the tax is imposed on the fair market value of the entire going concern. The extremely broad reach of S. 1935 goes well beyond even its sponsors' purported aim—to recapture the value of the spectrum used by a licensee.

Instead, this tax would be applied to the gross value of all assets sold by the radio or television station. Thus, the tax would reach not only the value that could be attributed to the FCC license, but also to all investments in equipment, physical plant, employees, and other station assets. An analysis of station appraisals demonstrates how broadly such a tax would sweep.

In one example of a television station appraisal, 44.3% of the station's value originated from tangible assets, such as physical plant, transmitter equipment, and the towers. Other significant portions of the station's value included depreciable intangible assets such as subscription lists, network affiliation contracts, and employee contracts.

It is important to recognize that both the tangible assets and many of the intangible assets owned by stations are the result of significant investments by the stations' operators. Only an indeterminate percentage of a station's value can be attributed to the value of the FCC license, going concern value, and goodwill.

In a similar example of a radio station appraisal, 21% of the station's value originated from tangible physical assets, while the rest of the value is divided between depreciable and nondepreciable intangible assets.

Thus, the unfairness of this transfer tax is demonstrated by the fact that it would reach the total value of a station transfer, even though only a smaller portion of that value can be attributed to the spectrum, which is the purported target of the sponsors of the bill. Furthermore, this tax will act as a powerful disincentive for station operators to invest in their facilities. Because the tax will reach every asset of station's operations, whether these are tangible, like cameras or studio equipment or programming, or intangible, like long-term contracts with talented employees, stations will be less willing to make improvements in such assets. The public served by these stations can only suffer as a result.

D. This transfer tax proposal raises serious questions regarding proper legislative procedures for tax matters

The transfer tax proposal raises several procedural issues that should not be ignored by the Subcommittee. Senator Bentsen, the Chairman of the Finance Committee, raised similar concerns on the Senate floor on December 10, when the antecedent to S. 1935 was debated. At that time, he questioned the characterization of this proposal as a user fee, and said instead that it constituted a sales tax.

It was his position that the tax properly should be within the jurisidiction of the the Finance Committee, because its structure raised questions far more appropriate to the commitee with jurisdiction over taxation issues. For example, the "fee" or tax is a percentage of the total value of a sale of a broadcast property. The tax writing committees are able to give appropriate consideration to the method of payment of the sale price, the definition of the taxable property, the treatment of involuntary conversions, the treatment of tax-free exchanges, effective dates for budget purposes, and numerous other matters.

These variables suggest the need for expert consideration before a tax of this nature is imposed. For example, if payment were made on the installment method, might it be appropriate to defer the assessment of the tax on the portion of the purchase price which is to be paid at a later date and to assess the tax at the time actual payment is made? If the station's tower sits on excess land held for future commercial development, is the appropriate basis for computing the tax the value of the total property or only the part dedicated to broadcast use? The technical nature of these and other questions argues for full consideration by the Finance Committee, not the Commerce Committee.

Furthermore, our concerns about any proposal that targets one industry for the payment of a special tax in order to fund a specific program raise broader questions about appropriate legislative procedures. The Budget, Appropriations and Finance Committees, as well as the procedures of the Senate and the Congress that specifically are designed to provide several levels of review befoe any program receives federal funding, will be bypassed if each authorizing committee is permitted to create a new "fee" on an area of activity within its jurisdiction and then dedicate the proceeds of that fee to another program. If S. 1935 is enacted, what would prevent, for example, the Agriculture Committee from imposing a "fee" ostensibly for the privilege of using the meat inspection program, but which is assessed on each pound of beef sold at supermarkets, in order to fund a new agricultural marketing or research program? There appears to be no difference between these two situations, and neither takes into account necessary procedural and budgeting steps built into the legislative process.

CONCLUSION

NAB strongly opposes S. 1935. We hope the Subcommittee will reject this bill, and instead seek other methods of funding public broadcasting that remain true to public broadcasting's roots, that maintain the structure of commercial broadcasting that has served the public well, and that comport with proper tax policy and procedure.

NAB stands willing to assist the Subcommittee in developing such alternatives.

Senator INOUYE. I would like to change the procedure slightly at this stage and call on Senator Packwood.

Senator PACKWOOD. The Chairman is very kind. I have got to go to a 2:30 meeting with lots of constituents, and I had two or three questions I wanted to ask Mr. Fritts, and I cannot stay for the rest and I apologize to you, gentlemen.

One, Mr. Fritts, is there any significant tax levy or fee that the National Association of Broadcasters would be prepared to accept on commercial broadcasters?

Mr. FRITTS. I think certainly we would be happy to talk about various options, number one.

Number two, I think there is some latitude for discussion, and certainly some opportunity that we would be willing to pay our fair share.

We proposed, for instance, one mechanism for funding similar to what the Carnegie Commission had pointed out in 1967. A receiver tax or fee, if you want to call it that, could be levied against the various television and radio sets which are distributed.

We also would be happy to pay our fair share of taxes on the broadcast equipment which we buy. Now, in a new era of high-definition television, we have looked at some figures which represent huge, huge sums of money that broadcasters will have to spend to develop high-definition television within their own station. Something on the order of $3 million per station.

We would be happy to pay our fair share of taxes on that.

Senator PACKWOOD. Would you do me a favor and get me the estimates that you have on the transmitters?

And I am well aware of the high-definition television expenses that are coming, they are extraordinary, and I am assuming we are going to move into it. Get me an idea of how much money this particular idea would raise. The transmitter part of it, not the receiver part. I do not mind having the receiver part, but separate the two.

Last question, what is your best estimate of the dollar value of transfers of commercial stations for the most recent years, and do you know the corresponding numbers for cable systems?

Mr. FRITTS. I do have those figures, Senator Packwood. The broadcasting industry trading in calendar year 1987 was $7.5 billion. The preceding year it was $6.1 billion.

As I heard Mr. Kadlec's report, that apparently is trailing downward now. I think we reached a peak as a number of entities sought to take advantage of the tax laws, and sell their properties before the new capital gains changes.

Cable transactions conversely are very close to that. Cable transactions last year amounted to $6 billion in total transfers, and the year before were $5 billion. The estimates are that that is trending upward as opposed to downward.

Senator PACKWOOD. Thank you, Mr. Fritts. Thank you, Mr. Chairman. As usual, you are quite generous, and I appreciate it.

Senator INOUYE. Mr. Sherwin?

STATEMENT OF RICHARD SHERWIN, CHIEF OPERATING ENGINEER, GRAPHIC SCANNING CORP., ON BEHALF OF TELOCATOR NETWORK OF AMERICA

Mr. SHERWIN. Mr. Chairman, thank you for this opportunity to appear before you this afternoon.

My name is Dick Sherwin, I am the Chief Operating Officer of Graphic Scanning Corporation. Graphic has been in the mobile communications business for 15 years, and today provides mobile communications services to more than 300,000 customers in 24 states across the country. I did not want the New Jersey comment to stand.

I am appearing before you today on behalf of Telocator Network of America, the 40-year old national trade association representing the mobile telecommunications industry, in my capacity as a member of its board of directors.

Telocator has more than 650 members, including nearly 40 cellular telephone companies ranging from operators of multiple systems to providers of paging and conventional radio telephone service serving well over 10 million subscribers in this country.

With all due respect, Mr. Chairman, Telocator opposes enactment of the Communications Transfer Fee Act of 1988. I would like to explain some of the reasons for our opposition.

It is often said that communications is the central nervous system of our country. If so, then to borrow an analogy from Chairman Patrick, mobile communications services are its legs.

Communications provides the means by which we do business, defend ourselves, and obtain help and assistance. The availability of mobile communications enables us to do all of these things, but away from the home or the office.

Mobile communications is a productivity tool. The efficiencies inherent in communicating by radio translate directly into cost reductions for the businesses using it. The mobile communications industry also provides the lifeline when landline facilities fail, or for example when doctors must be summoned for emergencies.

And free of charge, the industry has taken it upon itself to provide the Lifepage program in which organ donor recipients are notified of an available organ, so that they may use it quickly.

To impose a new and an additional tax on the mobile communications industry will unnecessarily increase the costs of the services these companies provide, forcing up the price of critical lifeline services, diminishing service quality, and reducing the value of mobile communications as a means of enhancing productivity.

The benefits that mobile communications already contribute to the economy and our society far outstrip the revenues that could be derived from the proposed transfer fee. For these reasons alone

Telocator must oppose the legislation before the subcommittee today.

In the case of cellular, the transfer fee works a particular inequity. When the Federal Communications Commission first established its cellular licensing process, it elected to define arbitrary market boundaries within which each cellular system would operate, and to authorize systems on that basis.

The cellular industry and the Commission have since found, however, that there are significant efficiencies to be obtained by operating certain individual systems on a region-wide basis.

Wireline licensees were able to regionalize the provision of cellular service almost from the time they completed construction, primarily because they were able to obtain initial authorizations very easily in all of the contiguous cities where they provided basic telephone service.

For non-wireline carriers, however, regionalization requires the sale or transfer of substantial numbers of systems from their original licensees to those firms with the resources and especially the commitment to build area-wide systems.

The proposed transfer fee will impose an additional and significant cost on this process, preventing the non-wireline companies from leading the industry in keeping the price of high-quality service at affordable levels.

Telocator also believes that it is inequitable to saddle one group, the users of the electromagnetic spectrum, with the burden of supporting public broadcasting. Telocator strongly supports public broadcasting. Commensurate with the broad public benefits derived from that worthwhile endeavor, however, funding for public radio and television should come out of general revenues.

If the committee concludes that a tax or a charge on radio licensees would serve the public interest, Telocator believes that all spectrum licensees should be subject to such a tax. There should be no exemption.

The argument by broadcasters that their unique service for the public is grounds for an exemption overlooks the fact that radio licensees in every service are under the statutory mandate to serve the public interest, convenience, and necessity.

As I discussed earlier, the services rendered by mobile communications licensees to the public and to our nation's economy are every bit as critical, if not more so, than the services offered by broadcasters or any other users of the electromagnetic spectrum.

Finally, there are those who propose that spectrum be awarded by an auction process. Telocator would respetfully dissent from such a proposal. Auctions would discourage participation by entrepreneurs and small businesses and by minorities who may find it difficult to obtain the necessary funding.

For instance, many of Telocators' members are small businessmen and women who now provide high quality services at extremely affordable prices. They would not have been able to enter the business if they had had to compete with extremely deep pockets.

In the end, the auction proposal suffers from the same basic defect as the transfer fee. It would establish a charge for a resource whose users already make a substantial contribution to the economy through the services they provide and through the taxes that they already pay.

Thank you again for this opportunity to share our views with you. I would be happy to answer any questions.

[The statement follows:]

STATEMENT OF RICHARD SHERWIN, CHIEF OPERATING OFFICER, GRAPHIC SCANNING CORP.

Mr. Chairman, Members of the Subcommittee. Thank you for this opportunity to appear before you this morning.

My name is Richard Sherwin. I am the Chief Operating Officer of Graphic Scanning Corporation. Graphic Scanning has been in the mobile communications business for 15 years, and today provides mobile communications services to more than 300,000 customers in 24 cities across the country.

I am appearing before you today on behalf of Telocator Network of America, the national trade association representing the mobile telecommunications industry for the last 40 years, in my capacity as a member of Telocator's Board of Directors. Telocator's more than 650 members include nearly 40 cellular telephone companies ranging from operators of multiple systems to licensees serving only a single market, and more than 250 providers of paging and conventional radio telephone service.

With all due respect, Mr. Chairman, Telocator opposes enactment of the Communications Transfer Fee Act of 1988. Let me explain the reasons for our opposition.

It is often said that communications is the "central nervous system" of our country. If so, then (to borrow an analogy from Chairman Patrick) mobile communications services are the legs. Communications provides the means by which we do business, defend ourselves, and obtain help and assistance. The availability of mobile communications enables us to do all of these things away from home or office. The mobile communications industry also provides the lifeline when stationary facilities fail or when doctors must be summoned for emergencies.

Burdening the communications industry generally, and the mobile communications industry in particular, with what amounts to an additional significant tax could impede the growth and development of companies that provide critical services to the public and already make a substantial contribution to the U.S. economy.

Mobile communications today is a $34 billion a year industry. Above and beyond this substantial direct contribution to the economy, however, mobile communications services have contributed to the growth of other sectors of the economy by providing the tools that enable the largest and the smallest firms to improve their efficiency and their productivity.

Mobile communications is "leverage" technology. That means the efficiencies inherent in communicating by radio translate directly into cost reductions for the business using it. For instance, the service sector (which makes up almost two-thirds of the nation's Gross National Product) depends increasingly upon mobile communications to make better use of time and to stay in touch with customers and clients. Likewise, the transportation industry and public safety officials look to mobile communications services to serve the public most efficiently.

The increasing importance of mobile communications is evident from the explosive growth in the number of mobile communications users. The number of pagers in use nationwide has grown from less than one million in 1979 to 7 million today. There were no cellular radio subscribers before 1984. Today there are more than one million, with one study projecting 10 million subscribers by 1990. In one survey, 98% of cellular user respondents indicated that they use cellular in a business context.

To impose a new tax on mobile communications companies will unnecessarily increase the costs of the services these companies provide, forcing up the price of critical lifeline services and diminishing the value of mobile communications as a productivity tool. The benefits that mobile communications already contribute to the economy and our society far outstrip the revenues that could be derived from the proposed transfer fee. For these reasons alone, Telocator must oppose the legislation before the Subcommittee today.

The transfer fee mechanism itself poses a number of other problems. Imposing a charge each time a license is transferred or assigned would result in inequitable apportionment. Some communications properties would be subject to double or triple taxation, based solely upon the number of times they were sold or transferred, while others would be taxed only once or not at all.

In the case of cellular, the transfer fee works a particular inequity. When the Commission first established its cellular licensing process, it elected to define arbitrary market boundaries within which each cellular system would operate, and to authorize systems on that market-by-market basis. This licensing process was designed to facilitate the smooth and rapid authorization of systems, while inherently assuming that each system could and would function as a stand-alone operation.

The cellular industry and the Commission have since found, however, that there are significant efficiencies to be obtained by operating certain individual systems on a regional basis.[1] Wireline licensees were able to regionalize the provision of cellular service almost from the time they began service because they were able to obtain initial authorizations in all of the contiguous cities where they provided basic telephone service.

Now-wireline carriers are now in the process of building regional cellular systems, so that they will be able to compete with wireline systems.[2] For non-wireline carriers, however, regionalization will require the sale or transfer of substantial numbers of systems from their original licensees to those firms with the resources and commitment to build area-wide systems. The proposed transfer fee will impose an additional and significant cost on this process and will place the non-wireline companies at a serious competitive disadvantage, and will increase the costs of service to the public.

Beyond the substantial additional costs, let me also note parenthetically that the mechanics of collecting the transfer fee proposed in the legislation will also impose a significant burden on transfers and assignments.

The staff working draft of April 15 proposes that transferors would have 10 days after closing a transfer to remit the transfer fee to the FCC. This is proper; collection of charges prior to closing would require the FCC to refund moneys in cases where deals did not close. However, until the fee is paid, the Commission may only conditionally approve the transfer.[3]

I would suggest that banks and other financial institutions supplying the funds for a transfer would be very reluctant to release the millions of dollars involved in many of these transactions on the basis of a "conditional" grant that can be revoked—apparently at any time after the closing—if the Commission "has good cause to believe" that the consideration received for a communications property does not reflect its fair market value.

Telocator also believes that it is inequitable to saddle one group—users of the electromagnetic spectrum—with the burden of supporting public broadcasting.

Public broadcasting benefits the public generally, not just one segment of the public. Indeed, the Public Broadcasting Act states that the growth of public radio and television was "in the public interest" and furthered "the general welfare." As Congress observed when it expanded the public broadcasting program in 1978, noncommercial broadcasting is intended to deliver the broadest range of educational and cultural services to as many citizens of the United States as possible.

Telocator strongly supports public broadcasting. Commensurate with the broad public benefits derived from that worthwhile endeavor, however, funding for public radio and television should come out of general revenues.

If the Committee concludes that a tax or charge on radio licensees would serve the public interest, Telocator believes that all licensees should be subject to such a tax. There should be no exemptions.

The argument by broadcasters that their "unique" service to the public is grounds for an exemption overlooks the fact that radio licensees in every service are under the statutory mandate to serve the "public interest, convenience, and necessity" in order to obtain their licenses intitally and as a prerequisite for renewal. As I discussed earlier, the services rendered by mobile communications licensees to the public and to our nation's economy are every bit as critical (if not more so) than the services offered by broadcasters or any other users of the electromagnetic spectrum.

Finally, there are those who propose that spectrum be awarded by an auction process. Telocator would respectfully dissent from such a proposal. Auctions would favor those with pre-existing capital and discourage participation by entrepreneurs, small businesses, and minorities who may find it more difficult to obtain funding. Many of Telocator's members are small businessmen and businesswomen who provide high-quality paging and mobile telephone service to their customers, but who would not have been able to enter the business if they had had to compete with deep pockets in an auction. Likewise, the fact of the cellular industry—with dozens of operators today—would have had a much different look if only the rich could have applied for licenses in 1982.

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[1] *See, e.g.*, Madison Cellular Telephone Company, 2 FCC Rcd. 5397 (1987); Corpus Christi Cellular Telephone Company, 3 FCC Rcd. ______ (rel. April 4, 1988).

[2] The Commission has recognized that the non-wirelines will have to consolidate in order to compete effectively with the wireline carriers. *See, e.q.*, Madison Cellular Telephone Company, *supra*. *See also* Telocator Network of America, FCC 85-508 (rel. September 17, 1985), at ¶¶ 19-20.

[3] S. 1935, 100th Cong., 2d Sess. § 8(g)(7) (Staff Working Draft, April 15, 1988).

In the end, the auction proposal suffers from the same basic defect as the transfer fee: it would establish a charge for a resource whose users already make a substantial contribution to the economy through the services they provide. For this reason, we would oppose it.

Thank you again for this opportunity to share our views with you. I would be happy to answer any questions you might have.

Senator INOUYE. Thank you very much, Mr. Sherwin.

Mr. Huggins.

STATEMENT OF CURLEY HUGGINS, MANAGER, HORRY TELEPHONE COOPERATIVE, INC.

Mr. HUGGINS. Thank you, Mr. Chairman. It is indeed a pleasure, coming from the state of South Carolina, Senator Hollings' state, to appear before you today.

My name is Curley Huggins and I am Manager of the Horry Telephone Cooperative in Conway, South Carolina. Mr. Chairman, I submitted a detailed statement for the record and I would like to summarize that statement in my oral comments.

Senator INOUYE. Please do.

Mr. HUGGINS. Today I am speaking on the behalf of the National Telephone Cooperative Association, which is a trade association representing more than 450 small independent telephone systems who serve rural subscribers throughout America.

Our cooperative is eagerly awaiting the FCC decision to begin licensing in the rural service areas, so we can provide cellular phone service to our subscribers.

We are opposed to the imposition of fees for the use of non-mass media spectrum for services such as cellular, paging, and land mobile radio. We are particularly opposed to the auction proposal and have actively resisted its adoption in the Congress and the FCC, for the following reasons, none of which, I might add, were addressed in Mr. Sikes' testimony earlier in the day.

Auctions will not cure speculation. Initially, the FCC had proposed auctions as a way to eliminate speculation in licenses for non-wireline cellular service. The problem is not as serious as it was, since all the licenses to serve metropolitan areas have already been granted.

The FCC is expected to start licensing the rural areas this summer and complete this process within a year. Therefore, by the time legislation authorizing auctions is passed, the cellular licensing process is likely to be completed and the problem eliminated. In addition, the Commission has just taken action to curb speculation, so the need for corrective action is not as critical.

Auctions could preclude small telcos from obtaining radio licenses. Small telephone companies are primary communications providers in their areas and are well suited to provide radio service. Under the current system of licensing, they compete on an equal plane with other potential licensees.

If auctions are implemented, the lack of wealth of NTCA members compared to larger, financially stronger companies would put them at a competitive disadvantage and exclude them from the cellular licensing process.

The auction proposal is discriminatory in that it only applies to one class of users of the spectrum, non-mass media spectrum users.

Also, there is no speculation in wireline applications because they are restricted to telephone companies who have a proven record of providing telecommunications service. It is inequitable, therefore, to impose an auction on wireline applicants when all the speculation occurs on the non-wireline side.

Auctions would also increase the cost of implementing service for the auction winner. Licensees in more lucrative metropolitan areas were not subject to such costs. It would be unfair to impose higher fees on licensees in less viable rural areas.

Finally, auctions do not satisfy the public interest standard for radio license assignment. The Communications Act identifies factors which advance the public's interest and which the FCC must take into account when assigning radio licenses.

None of these factors include the wealth of the applicant. Under the auction scheme, however, wealth would be the sole criterion to determine who obtains a license.

In closing, we would urge Congress to reject the auction proposal because it is not in the public interest and prejudices the right of small telcos to continue to provide telecommunications service to their communities. Furthermore, we discourage the Congress and the FCC from imposing any other fees or requirements on RSA applicants which could slow down the licensing process or make it more uneconomical to provide rural service.

We would ask the Congress to encourage the FCC to issue all RSA licenses as rapidly as possible.

Mr. Chairman, this concludes my remarks.

[The statement follows:]

STATEMENT OF CURLEY P. HUGGINS, MANAGER, HORRY TELEPHONE COOPERATIVE

Introduction

Good morning Mr. Chairman and members of the subcommittee. My name is Curley P. Huggins. I am the Manager of Horry Telephone Cooperative in Conway, South Carolina. Today I am speaking on behalf of the National Telephone Cooperative Association (NTCA) which is a national trade association representing more than 450 small, independent telephone systems throughout rural America. Many of our members provide radio services, such as land mobile and paging, and are eagerly awaiting FCC authorization to provide cellular service in rural areas.

NTCA opposes the imposition of fees for use of the spectrum, particularly the auction proposal.

Background

In 1986 the FCC proposed legislation authorizing the sale of non-mass media radio spectrum. In October, 1986 the House Energy and Commerce Subcommittee on Telecommunications and Finance held a hearing on the issue but no further action was taken.

The President's FY 1988 budget included a plan to auction non-mass media spectrum. NTCA actively fought adoption of the plan. Congress rejected the auction proposal because it was not in the public interest, gave large companies an unfair advantage, and was not applied across the board to all users of the spectrum.

The Administration's FY 1989 budget includes a proposal under which the Federal Communications Commission (FCC) would charge a fee to license holders of the non-mass media radio spectrum. It states that the fee would generate $250 million per year in revenues beginning in 1990. It would apply to frequencies used by small telcos to provide cellular, land mobile radio and paging services. The Administration is expected to submit an auction-type plan to implement the fee collection. The proposal appears to be an extension of the Administration's efforts to reduce the deficit by selling federal assets.

Auction Will Not Cure Speculation

Initially, the FCC proposed the auction as a way to eliminate speculation in licenses for non-mass media radio frequencies. The problem is not now as onerous as it was in 1986 because all of the licenses in the Metropolitan Service Areas (MSA's) have been granted. The FCC is expected to begin the RSA licensing process this summer and complete the process within the next year. Therefore, by the time legislation is passed authorizing the FCC to auction frequencies, the licensing process is likely to be completed and the problem eliminated. Additionally, the FCC has just taken action to curb speculation so the need to correct is not as critical.

Auction supporters argue that if auctions are implemented, the result will be that radio licenses will be put to their highest use and thereby eliminate the speculation in licenses. However, nothing in the auction proposal prevents a radio license buyer from reselling that license in the future.

Further, there is no reason to auction wireline cellular licenses because telephone companies are not speculating.

The Administration's Auction Plan is Discriminatory

The auction plan is also objectionable on the grounds that it discriminates against users of just one small segment of the spectrum and exempts the largest users, the mass media services. Selling off the spectrum used by one group but not the other is unfair and inequitable.

The auction will also significantly increase the cost of implementing service for the auction winner. This increase in cost was not paid by those who were awarded licenses in the more lucrative MSA's. Higher licensing fees in RSA's will not only discourage implementation of this modern telecommunications service in rural areas but also adversely affect rural development.

Auctions Preclude Small Telcos from Obtaining Radio Licenses

Small telephone systems serving rural areas are primary communications providers in their areas and are well suited to provide radio-based services. Under the current system of spectrum assignment they compete on an equal plane with all other potential licensees. The lack of wealth of NTCA telcos relative to larger competing entities, will put them at a competitive disadvantage and exclude them from the licensing process if auctions are implemented.

Auctioning spectrum would especially discriminate against those who seek to provide vital new telecommunications services in the more rural parts of the country. Small telcos who wish to develop or expand radio service could be shut out of the licensing process. This is particularly unfair because rural systems are not "cream skimmers" or speculators. They have a long history of providing telecommunications services to areas previously unserved or underserved.

If only the largest, wealthiest companies are able to procure licenses they could have an incentive to "warehouse" spectrum to prevent other companies from competing or extract monopoly "rents" for use of the spectrum by smaller entities. This kind of marketplace behavior is likely to increase the rates of subscribers, thus denying them the benefits of competition among a number of different providers.

Auctions Do Not Satisfy the Public Interest Standard for Radio License Assignment

The FCC's mandate in assigning radio licenses is identified in Sections 301, 307 and 308 of the Act. These sections identify factors which advance the public's interests and do not include the wealth of a license applicant. Under the auction scheme proposed by the FCC, wealth is the determining factor in assigning radio licenses.

The FCC is obligated under § 151 of the Communications Act to promote the public's interest in telecommunications. Issuing licenses to the highest bidder, however, is inconsistent with this duty and minimizes the Commission's congressionally mandated role to regulate in the public interest.

If an auction were allowed, the FCC would be less concerned with assuring that spectrum is put to uses which best serve the public and less concerned with regulatory oversight. Checks and balances built into other licensing methods would be lost in the auction proposal. For example, under the comparative hearing or lottery system, licenses can be challenged when an application is filed and again during the renewal period to make certain that the public interest is protected.

Further, NTCA believes auctions would be inconsistent with the Act's specific requirement that spectrum be assigned in a fair and equitable manner. Section 307(b) of the Act provides:

> ...the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of same.

The auction proposal fails to provide any mechanisms to ensure the "fair" and "equitable" distribution of radio service. Clearly, small companies are not equal competitors of larger, wealthier enterprises.

Conclusion

We urge Congress to reject the auction propsal, because it violates the public interest and prejudices the right of small telcos to provide radio services to their communities.

NTCA also hopes that no form of spectrum fees are implemented. The FCC should move rapidly to issue all licenses in RSA's. Non-wireline speculation will cease to be a problem once the licensing process has ended. The spectrum belongs to the public and those who seek to provide public service should not have to pay an unreasonable price to do so.

Senator INOUYE. Thank you very much, Mr. Huggins.

Mr. Fritts, in your testimony you head a section by saying "broadcasters have unique public interest obligations attached to their licenses." We had this checked out by the staff and, according to the staff, the following public interest obligations which were either imposed by law or by regulations have been either eliminated or relaxed:

The fairness doctrine, news and informational programming, commercial limits, children's programming; the multiple ownership rules have been relaxed from 7–7–7 to 12–12–12; the anti-trafficking rules, the postcard renewal, ascertainment and program logs for public inspection.

And what remains as public interest obligation—equal time rule, the issues program list, and finally the emergency broadcast system is supposed to be voluntary.

Mr. FRITTS. Well, to take them in reverse order, they are still issuing fines at the FCC if you do not have an emergency broadcast receiver which is operative.

Two things, Mr. Chairman. One, I was struck by Mr. Henry's remarks, which I think all of us are cognizant of: In large part, it depends on which FCC is in office as to the way broadcasters are regulated.

And number two, the Congress itself checked off on a number of those proposals in the era of regulation.

I should point out that Mr. Friendly this morning attempted to equate airline schedules with radio or television deregulation to some extent. Broadcasters have never asked for deregulation like the banks, the truckers, the airlines.

We asked for some underbrush to be cleared away. We never asked for the removal of public interest responsibilities.

Senator INOUYE. None of these were requested by you?

Mr. FRITTS. Some of them were, yes, but not all of them.

Senator INOUYE. The fairness doctrine you did not equest?

Mr. FRITTS. We did indeed. There are those on that list which we did. There are those which we did not, quite frankly.

Senator INOUYE. Children's programming?

Mr. FRITTS. I am not sure about children's programming.

Senator INOUYE. Commercial limits.

Mr. FRITTS. As a matter of fact, on commercial limits in children's programming, I know we asked the Commission not to remove those, just the opposite of what they ultimately did.

Senator INOUYE. Are they enforcing anything?

Mr. FRITTS. They are indeed. I understand that several stations were set for comparative renewal hearing in the past couple of weeks, which means that those stations will have to go through a long, arduous process to determine whether or not they maintain renewal of their licenses.

Senator INOUYE. Have any of them lost their licenses?

Mr. FRITTS. Well, the RKO situation has been going under comparative renewal for a number of years. Oftentimes sanctions are given, oftentimes short term renewals, to determine whether or not the station comes into compliance within a certain period of time.

Senator INOUYE. How would your members feel if the Congress eliminated the non-commercial limitations and all of the public stations became commercial?

Mr. FRITTS. Well, in a way they have. We have enhanced underwriting now as one of the sources of public broadcasting.

Someone talked about the competitive factor between public and commercial broadcasting a moment ago. In reality, one or two percentage points of audience in a major market makes a big difference in the revenue of a broadcast station.

In reality, broadcasters, both public and commercial, compete for talent. They compete for programming. Oftentimes the public station bids up the price of syndicated programming, which is normally commercial broadcast fare.

There are a number of ways that we compete. There are a number of ways we work together, and we are pleased to do that and we are certainly hopeful that we will be able to continue working together.

Senator INOUYE. Is it in our national interest to have a public broadcasting system?

Mr. FRITTS. I definitely think it is in our national interest. Public broadcasting serves a very important niche in our society. We have and do continue to support public broadcasting funding.

I guess this hearing points out the debate over how it should be funded and the problems of funding public broadcasting. As I mentioned earlier, only 16 percent of the funding comes from the Federal government itself. So the public broadcasting body generates a great deal of income through other sources as well.

But we believe public broadcasting serves a very important niche in today's society. And furthermore, this hearing, at least from my perspective, has pointed out the major policy considerations with which this subcommittee is faced when it begins to change the fundamentals of the system as we know it.

I am struck by that as we go through this debate.

Senator INOUYE. Do you think it is in our public interest to require public broadcasting companies to beg for money the way they are doing now?

Mr. FRITTS. I presume you mean through their auctions and their fundraising activities?

Senator INOUYE. That is right, sir.

Mr. FRITTS. As opposed to solicitation of advertising, enhanced advertising, and on that basis?

I am not versed well enough in terms of their funding mechanisms to say whether they should be doing that or shouldn't be doing that. I do know that they have been immensely successful in most instances doing that.

Senator INOUYE. Do you believe that the spectrum belongs to the people?

Mr. FRITTS. That is an interesting question. I had the occasion during lunch to go back to the office and I was rummaging through some papers. Senator Dill back in 1927, who authored the original Radio Act, said this:

"The government does not own the frequencies, as we call them, or use the frequencies. It only possesses the right to regulate the apparatus. We might declare that we all own channels, but we do not."

And that was backed up in 1979 by a similar finding by the Congressional Research Service: "We believe the fact that no person nor the government itself owns the frequencies or uses the frequencies is the clear intent of section 304 of the Communications Act of 1934. It has never been judicially challenged. The law is clear that no property rights today exist."

Senator INOUYE. We have been advised that it presently costs approximately a million dollars to construct a cellular system to serve 150,000 people. Is that correct?

Mr. SHERWIN. That is close.

Senator INOUYE. That is close?

Mr. SHERWIN. To serve 150,000 population, Mr. Chairman, as opposed to subscribers. That system will not serve more than 10,000 or 15,000 subscribers, my guess would be.

Senator INOUYE. And we have been also advised that that sized system now sells on an average of approximately $70 per person or about $10 million. Is that right?

Mr. SHERWIN. I think that size system for a 150,000 population, your number is high.

Senator INOUYE. What would be the correct number?

Mr. SHERWIN. I would say it varies. The latest prices that I have seen varied between $35 and $60 for that sized system, $35 and $60 per pop for that sized system.

Senator INOUYE. So instead of $10 million, it could be between $5 million and $8 million?

Mr. SHERWIN. Between $4 million and $8 million, yes.

Senator INOUYE. And you think the two percent fee would be an undue burden, if you are receiving four times or eight times the value of the facility?

Mr. **Sherwin**. Mr. Chairman, I think in that particular situation, if all members, all users of the spectrum, were to pay it, that might be acceptable.

The point I was trying to make with that particular example was that because telephone companies, the people who use the wireline block, are essentially permitted to get the authorization so much more easily in contiguous segments of the marktplace, that those who are non-wireline carriers are subject to a particular disadvantage in that they have to try to buy those particular systems contiguous to their own.

And what that does is that tends to force the cost of the acquisition to be higher, and therefore the service cost would be higher. And what that does is that tends to reduce the number of subscribers that can afford the service, and therefore that would reduce the revenue.

And as that reduces the taxable revenue, it reduces the tax available.

Senator **Inouye**. Would you support the transfer fee if the trust fund were eliminated?

Mr. **Sherwin**. I think if the moneys went into general revenue, the answer is I think our constituents might do that.

Senator **Inouye**. You would support that?

Mr. **Sherwin**. Yes.

Senator **Inouye**. But if it is going to go to public broadcasting, you would be against it?

Mr. **Sherwin**. If it were a trust fund.

Senator **Inouye**. It is the same money.

Mr. **Sherwin**. We believe—and maybe I should clarify. We believe that the moneys for public broadcasting, which are necessary, should come from the general revenues.

If the committee decides that it needs to levy a tax on users of the spectrum, it should be for all users. We would prefer to see other mechanisms for developing revenues which go into general revenue, other taxes which go into general revenue, which would be more equitable for our constituents and for our users.

I believe that what we would rather see is not so much a proposal in which those people who buy properties are forced to pass on costs of a transfer fee type of thing to the user, but rather to tax across the board, where all users of the spectrum might be taxed.

That is one approach, a hypothetical approach which may work, but not to narrow it to just those people who are buying properties because they must provide area-wide services, as an example, and therefore those particular customers in that particular area wind up having to pay higher usage charges, whereas across the country it could be more equal by taxing everybody on a periodic basis.

Senator **Inouye**. When you presently sell your system, do you not have to pay fees all over the place? Attorney's fees, recording fees, and filing fees, and license fees?

Mr. **Sherwin**. Mr. Chairman, with all due respect, we pay fees for almost everything that we do, and it does not mean—I mean, not just selling systems. We pay fees for appearing in front of Congressional committees. We pay fees for everything that we do.

Senator **Inouye**. You mean you are paying fees to come before us?

Mr. SHERWIN. When I say we pay fees, the Association pays a fee. All of our constituents pay fees for representation in front of the FCC on a daily basis for normal filings.

We pay fees for regulation, state regulation. We have representation in front of the states.

Senator INOUYE. If you pay all those fees, what about a little one for the little people here?

Mr. SHERWIN. We are just little people, Mr. Chairman.

Senator INOUYE. Mr. Fritts, would you be in favor of the transfer fee if there is no trust fund?

Mr. FRITTS. Mr. Chairman, we oppose the transfer fee, but we do not oppose the trust fund. That may be an empty well, I do not know, but we do not oppose different funding mechanisms for public broadcasting. We do think it should be broadly based and not targeted toward a particular of user of the spectrum or particular type industry, for that matter.

Senator INOUYE. Mr. Huggins, what do you say?

Mr. HUGGINS. Mr. Chairman, the membership of NTCA would oppose the transfer fees based primarily on the fact that we are concerned about any charge, any fee that might increase the cost of bringing cellular technology to rural areas across the country.

I might add that if we had to choose, as I pointed out in my testimony, between auctions or the transfer fee, of course, we feel like the transfer fee would not affect as many of our members.

Now, that is speaking personally on my behalf, but generically, NTCA would oppose any fee or any charge that may increase the cost of bringing cellular technology again to rural areas of the country.

Senator INOUYE. During the year 1987, how many of your members went bankrupt?

Mr. Huggins.

Mr. HUGGINS. None.

Senator INOUYE. Mr. Fritts, anyone who went bankrupt?

Mr. FRITTS. Yes, there were. Let me ferret out the information here. Thirty-five AM stations were either in bankruptcy or financial distress when ask, 15 FM stations, 18 AM/FM operations, seven television stations were bankrupt or financially distressed, 59 additional stations were thought to be in trouble when they were sold.

The average UHF independent station today is losing, according to the latest survey we have done, $1.4 million a year.

Senator INOUYE. That is out of how many people, how many members?

Mr. FRITTS. Out of a universe of slightly more than 1,000 commercial television stations and about 9,000 commercial radio stations.

Senator INOUYE. Mr. Sherwin.

Mr. SHERWIN. I know of at least three personally. I do not know the statistics for the industry.

Senator INOUYE. Well, gentlemen, I thank you very much, and I apologize for having required you to come back this afternoon, but you have been extremely helpful, and this committee will stand in recess.

[Whereupon, at 2:39 p.m., the subcommittee recessed subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of the Alliance for Fair Communications Licensing

The Alliance for Fair Communications Licensing consisting of the undersigned organizations, welcomes this opportunity to express our strong opposition to any proposal which would authorize the Federal Communications Commission to auction portions of the electromagnetic spectrum. We continue to believe that the Administration's auction licensing proposal is contrary to the public interest.

Electromagnetic spectrum is a scarce national resource. The Communications Act of 1934 gives the Federal Communications Commission jurisdiction to allocate and assign spectrum after a public interest determination has been made. A proposal to sell selected portions of the spectrum to the highest bidder would radically alter long standing telecommunications policy. Furthermore, such a proposal equates the public interest with the ability of a particular entity to pay the highest price.

This year, the issue of spectrum auction arose out of an Administration proposal to reduce the federal deficit. The Alliance firmly believes a spectrum auction policy would have a negligible impact on the federal deficit but would have a far reaching effect on telecommunications users and services.

Spectrum auctions would have a chilling effect on the development of new services and technologies because of the enormous risk and cost involved to entities bidding for a license. Furthermore, the burden of paying these increased costs would fall on communications users and would particularly hurt small and rural business customers. Clearly a proposal with such an extensive impact on policy demands a thorough review by regulatory and legislative bodies. It should not be decided in a budgetary context alone.

The Administration included a spectrum auction licensing proposal in its two previous budgets. Leaders in both the House and the Senate have consistently expressed reservations regarding the wisdom of auctioning off the public spectrum. Last year when the Senate Commerce Committee examined revenue raising alternatives—including auctions—it is reported that not one vote could be found in favor of the auction proposal.

The Alliance applauds the committee's rejection of the auction proposal last year. Further, we respectfully urge that the present system of assigning and transferring licenses be retained.

Chicago, IL, *April 25, 1988.*

Senator Daniel K. Inouye,
Chairman, Subcommittee on Communications,
Washington, DC.

Dear Senator Inouye: I write to support the concept in S. 1935 of a modest fee to be collected from persons disposing of broadcast permits or licenses, and placed in a trust fund for public broadcasting.

For the record, I am a director of CBS and a past Chairman of PBS. The views I express here are my own, and not those of these two organizations which believe in the First Amendment, even for their directors.

My support is keyed to one fundamental consideration—the need of public broadcasting for adequate and secure financing. That is, and has been, the major defect in the U.S. system. The Carnegie Report, preceding the 1967 Public Broadcasting Act, strongly urged such financing, based on a dedicated receiver tax. Unfortunately, Congress, while acting most commendably to establish the Corporation for Public Broadcasting to provide needed structure for the public television system, failed to address the critical issue of financing. The matter of the Federal level has ever since been one of fluctuating authorizations and appropriations by the Congress.

I recognize that there are other methods of financing public broadcasting, as the second Carnegie Report and other studies have made clear. But none has made progress. The transfer fee is not a perfect solution. The amount so obtained, while substantial, not only fluctuates from year to year but is obviously not, in and of itself, sufficient. But it does significantly address, even if it does not solve, the problem.

Basically, it is a worthwhile new beginning to the critical issue of providing stable long-term financing for the system. It represents a return to the overall public interest of a portion of the value of the scarce privilege—the license—granted to the broadcaster.

I make two other observations. There is no question about the need for stable, long-term funding. There is also no question about the need for increased funding. In 1986, the U.S. spent $4.70 per person on the public broadcasting system. Japan spent $13.98, the UK $24.79, and Canada $30.90. If one compares Federal contributions, the comparative figures are $0.77 per person in the U.S., $13.98 in Japan, $24.52 in the UK, and $23.01 in Canada. We are simply not doing enough, in light of the extraordinary contribution of the system, to education, to culture, to minorities and to an informed electorate upon which our republic depends.

Just think of one area—programming which not only entertains but educates our children—that is truly a window on the world. Think of programs like Sesame Street. Child by child, we build this nation. In the area of television where young children watch 30 hours a week, we must ensure that parents have available choices that assist the child to grow and to learn.

Finally, all of us welcome the contribution that the new technologies like cable TV, videocassettes, and video discs can make in these respects. But they are not a substitute for a healthy and growing public television system. They do not reach the over 90% of households covered by public television. Further, they are *pay* services, and thus are not available to all, especially the poorest families.

I have not studied and therefore do not address the details of the legislation. I do wholeheartedly support the concept and spirit of the legislation, and I thank you and the Committee for asking for my opinion.

Sincerely,

NEWTON N. MINOW.

OPASTCO,
Washington DC 20006, April 26, 1988.

Hon. ERNEST F. HOLLINGS,
U.S. Senate, Washington, DC.

DEAR SENATOR HOLLINGS: OPASTCO and Pond Branch Telephone Company, Inc., Gilbert, S.C., endorse the written comments submitted on behalf of the Alliance for Fair Communications Licensing. We do not think that auctions are a fair method for the allocation of the electromagnetic spectrum. At this time we see no need for a change in the method of assigning or transferring licenses.

If auctions are adopted, small local exchange carriers will be effectively prevented from providing cellular service in their rural areas. Auctions will allow the large companies with deep pockets to purchase R.S.A. Areas, thereby cornering the market and preventing small family owned companies and Rural Cooperatives from participating in cellular technology. As you have previously stated, auctions would open the door for wealthy foreign investors to acquire the right to provide cellular service to large portions of this country. This should be prevented. We have supported and will continue to support your efforts to assure the citizens of this country that there will be fair and equitable allocation of the electromagnetic spectrum.

I regret that prior commitments prevent me from being in attendance of the April 27, 1988 hearing. Please let me know how I may be of assistance to your efforts in the future.

Sincerely yours,

N. EVERETTEE KNEECE,
President.

NAMB,
April 27, 1988.

DEAR SENATOR HOLLINGS: The National Association of Media Brokers is the professional organization of the media brokerage industry. NAMB opposes S. 1935, the Communications Transfer Fee Act of 1987.

We understand that during Senate consideration of similar legislation last year, at least one trade publication published reports based on interviews with several media brokers that the legislation would have no impact upon buying and selling broadcast properties. Since that time, NAMB has had the opportunity to fully consider the impact of this legislation, and our position is that the transfer fee would have a significant and harmful impact on station transfers. Therefore, we must oppose this bill, and we respectfully request that this letter be included in the hearing record on S. 1935.

We understand that the staff draft of S. 1935 has revised the transfer fee provisions, which now would range from 2% to 4% of the fair market value of a transfer. This fee appears to be nothing more than a sales tax. As such, it would be imposed in addition to the taxes already paid on such transfers at the federal, state and local level. It inevitably will inhibit the efficient operation of the marketplace in these transfers.

This transfer tax will impose special burdens on transfers of properties that have been only marginally profitable, or which in fact have been losing money. For example, many AM radio stations have been operating under severe financial conditions for years. When such stations have been transferred, many operators have sold their facilities at little or no profit, or even at prices lower than the original purchase price. The addition of a 2% or 4% tax on struggling stations would only exacerbate the financial pressures under which they operate.

In conclusion, the transfer tax imposed by S. 1935 would place additional discriminatory burdens on sellers and buyers of broadcast properties, and would negatively impact upon the economic forces that now help insure that broadcast properties are operated by those best able to serve their local communities. NAMB appreciates your consideration of our views.

Sincerely,

Robert O. Mahlman.

FOREST
INDUSTRIES
TELECOMMUNICATIONS

POST OFFICE BOX 5446
EUGENE, OREGON 97405
PHONE 503/485-8441

April 29, 1988

The Honorable Ernest F. Hollings, Chairman
Senate Committee on Commerce, Science and
Transportation
Russell Senate Office Building (SR-254)
Washington, DC 20510

Dear Mr. Chairman:

The purpose of this letter is to present for the record the views of Forest Industries Telecommunications (FIT) regarding the Communications Transfer Fee Act of 1987 (S.1935). S.1935 is a Bill that, if adopted, would amend the Communications Act of 1934 to provide for the assessment and collection of a fee on the transfer of spectrum licenses and the establishment of a fund for public broadcasting. Since the members of FIT depend heavily upon the use of land mobile radio in conducting their business, the transfer fee concept included in S.1935 is a matter of direct interest and concern.

By way of background, FIT is the national organization of radio users licensed in the Forest Products Radio Service. For forty years FIT has been recognized by the FCC as the frequency coordinating committee for the Forest Products Radio Service. Members of FIT range from large corporations doing business on a national level to individual loggers engaged in local activity only. FIT has more than 2,000 members.

In the comments that follow, FIT will be addressing the spectrum aspects of S.1935 only. In doing so, FIT will reiterate additionally its objections to the use of spectrum auctions since that subject has been revived through the Spectrum Assignments Improvements Act of 1988 understood as being proposed by the Administration as an alternative to the transfer fee concept. FIT is chagrined not only that the Administration has seen fit to propose the aforementioned Act, but also that the auctioning involved is limited to non-broadcast UHF spectrum.

FIT urges the Committee, through you, Mr. Chairman, to bear in mind the essential and vital use of land mobile radio to users in the forest industries, most of whom are small business persons with limited capital resources. As seen by FIT, the Administration proposal, although described as a test, is a likely "stalking horse" for the concept of using auctions as a tool in spectrum management. FIT is clearly and unalterably opposed to such a concept because radios are needed and relied upon by loggers and others in the Forest Products Radio Service and their availability should not be contigent upon bidding successfully at an auction. Logging activities are generally in remote and mountainous areas where radio communications are the only method of communications available to the conduct of those activities. There are no telephone lines in most areas of logging activity.

Safety and emergency communications are of significant importance in an industry known for its hazards to personnel and property, as well as in protecting the forests from the ravages of fire.

The foregoing needs are genuine and should not be jeopardized merely because some other party is willing to bid high enough at a Federal Communications Commission sponsored auction to get the licenses. Such a price should not be put on safety and emergency communications if for no other reason than the public interest would be ill-served.

The revenue figures associated with the Administration's revised spectrum fee proposal are considered speculative at best by FIT. The Committee is urged to be foresighted and look beyond the "test" being proposed. The basic point is that the concept of auctions is itself fundamentally flawed. The membership of FIT is constituted of active users of land mobile radio very knowledgeable of the radio spectrum on which they depend. Without going into great detail, FIT would list the following as being among the shortcomings of using auctions in the radio frequency management process:

(a) Unless Applied To All Users of Radio Frequencies Equally, The Concept is Unfair. Past discussion on the use of auctions and now the Administration "test" proposal, exempts the broadcasting industry--the very one that profits the most from access to the spectrum. Basically, the exemption given to broadcasting should be extended to all users of radio and the concept dropped entirely, otherwise it should apply to all if it is to be adopted.

(b) Term "Unassigned Spectrum Only" is undefined. Proponents of auctions have maintained in the past and the Administration's proposed test would be used only for "unassigned spectrum" but nowhere is that term defined. Radio telecommunications is a dynamic technology with new designs permitting "narrow banding" and "channel splitting". Is the new spectrum resulting from technological advances "unassigned spectrum"? Is the re-use of a frequency band, i.e., a license expires without renewal, "unassigned spectrum"?

(c) No Provision For New Telecommunications Technology. Under an auction concept, how can experimenters, researchers, and planners go forward with advances in the telecommunications state-of-the-art? Certainly those interests should not be expected to compete with "deep pocket" interests. Of even greater concern, it would seem, is the point that those who "own" the frequencies obtained at auctions can then dictate their future use, stifling new technology if that suits their purposes.

(d) "Deep Pockets" Interests Will Get the Frequencies. Regardless of any explanation offered, an auction by definition sells its product to the highest bidder. Therefore, contrary to the most basic premises upon which the use of radio has been built in the U.S. and as provided for in the Communications Act of 1934, access to the spectrum under the FCC proposal will now go to the highest bidder, i.e., to the "Deep Pockets" while the small user will be denied access to radio essential to the safe and efficient operation of his business.

Turning now to the "Transfer fee" concept embodied in S.1935, FIT is strongly opposed to it as well. There is no need for a "transfer fee" from the standpoint of efficient management of the radio frequency spectrum. It places a tax on owners of radio stations of virtually all categories to support a trust fund for public broadcasting. FIT would urge that such a burden not be placed on the owners of radio facilities by singling them out for payment of a "Transfer fee".

The Federal Communications Commission, pursuant to the Communication Act of 1934, has carried out admirably over many years its responsibilities with regard to the assignment and transfer of licenses. Injecting a "transfer fee" contributes nothing to easing the burden to owners and the Commission in a station assignment or transfer situation. It unjustifiably adds an expense to support something totally unrelated to the processes of the Commission. Lastly, it violates the high principles that the Federal Communications Commission should act in the public interest, convenience, and necessity established by the Congress when it adopted the Communications Act of 1934. Based on those principles the United States has developed a superb radio communications system over the years since the Communications Act of 1934 was adopted. Use of radio frequencies on the basis of the concept of public interest, convenience and necessity has served our country well. Replacing that concept, with an auction of "Transfer fee" concept at this juncture can only undermine the public's fundamental right of access to the radio frequency spectrum.

We conclude by urging on behalf of FIT's membership that the Committee and the Congress actively oppose and vote against the use of auctions or any version thereof that relate a marketing approach including a "Transfer fee" for access to the radio frequency spectrum. If the Congress should, despite our plea to you, proceed with enacting legislation to permit auctions, "Transfer Fees", or some other market approach to licensing use of the spectrum, our final view is that the concept be applied equally to all users of the spectrum.

Should you or any of your staff have questions, or desire to discuss this subject further, please do not hesitate to contact this office.

Very sincerely yours,

FOREST INDUSTRIES TELECOMMUNICATIONS

James H Baker

James H. Baker
JHB: std

William H. Dempsey
President

ASSOCIATION
OF AMERICAN
RAILROADS

May 4, 1988

The Honorable Ernest F. Hollings
Chairman
Senate Committee on Commerce,
  Science, and Transportation
Russell Senate Office Bldg. (SR-254)
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to provide for the record the views of the Association of American Railroads (AAR) on S. 1935, the Communications Transfer Fee Act, and the Committee's hearing on the bill, held April 27, 1988. The AAR is an organization composed of most of the major freight railroad companies operating in the United States and, as such, is the joint representative and agent of these railroads in connection with regulatory and legislative matters of common concern to the industry as a whole.

The railroad industry's interest in communication matters is compelling. Railroads operate on narrow, ribbon-like rights-of-way, stretching across vast distances encompassing the entire country. Land mobile communications are a vital part of the safe and efficient operation of rolling stock on these rigidly designed pathways and are also essential to safety in railroad yard and terminal areas. This direct relationship between land mobile communications and the safety of life and property dictates that the railroads be assured not simply access to radio frequencies, but access to those frequencies which are best suited to their needs.

These comments will address both the transfer fee proposal of S. 1935 and proposals that would permit the FCC to use auctions in its spectrum management process. At the outset AAR wishes to underscore its continued belief that a competitive marketplace is preferable to government regulation. However, because of the finite nature of the radio frequency spectrum and the far-reaching public interest in the use of that spectrum, AAR believes the exclusive use of auctions for spectrum management is totally unrealistic.

50 F Street, N.W., Washington, D.C. 20001 (202) 639-2402

During the Committee's hearing the subject of spectrum auctions was introduced by Mr. Alfred C. Sikes, Assistant Secretary of Commerce for Communications and Information and head of the National Telecommunications and Information Administration. In his statement at the hearing he submitted a proposal to authorize the FCC "to use the competitive bidding process only in the assignment of licenses in the remaining unassigned six megahertz in the UHF band. . . ." This, in effect, revives a subject AAR believed to have been disposed of by the Congress at the close of its session in December, 1987.

The AAR again urges the Committee and the Congress not to adopt the auction concept as proposed by the Administration. While the proposal is narrowly focused and limited to "unused" UHF spectrum, it clearly is a "foot in the door" approach to achieve a spectrum auction objective that failed when attempted on a broader basis before. The United States, including the railroad industry, has developed a large and sophisticated radio telecommunications capability based on a principle that access to frequencies should be in accordance with the public interest, convenience, and necessity. This principle is a cornerstone of the Communications Act of 1934. Injecting auctions, whether narrowly focused or otherwise, into a long-standing spectrum management process would constitute a significant change in policy that would substitute economic wealth for public interest, convenience and necessity in resolving which interests should have access to the spectrum.

In the view of AAR, the use of auctions for spectrum management in place of public interest considerations not only is bad policy but also is unrealistic technically. Technical details and characteristics of radio frequency propagation cannot be swept aside. Advocates of auctions simply have not thought through how the FCC could realistically "package" a frequency and then put it up for auction. Thus, while the auction concept may appear to be an inviting one to economic theorists, it ignores engineering principles and defies application in an environment of modern telecommunications technology.

The effect of auctions and consequent "ownership" of radio frequencies would stifle not only research and development but the incentive to introduce more spectrum-efficient equipment. Research and development interests are not in a good position to compete in spectrum auctions and, even if they did manage to bid successfully on a frequency, there is no way of ascertaining whether a new product would have a frequency in which to operate. The Committee is urged to give this latter point considerable thought, since development of new telecommunications technology has always been an American strong point.

AAR has opposed the use of auctions in the past as being ill-advised and not in the public interest. AAR continues to maintain such opposition. Compared to auctions, the concept of transfer fees would be preferable if that were the only choice. However, AAR questions strongly the need or the desirability of imposing transfer fees on the nation's radio telecommunications interests.

As seen by AAR, the latest proposal to impose fees on the transfer of spectrum licenses, S. 1935, really amounts to a tax on all radio communications license holders to be used for a trust fund supporting public broadcasting. AAR does not question the needs or the merits of public broadcasting. However, AAR does question, as a matter of principle, the application of a fee (tax) on one segment of our society to support another segment in the same general field (in this case, telecommunications). Rather than a transfer tax being placed on a select group, if public broadcasting is worthwhile, its funding should come out of the general revenues raised from the American public overall.

AAR would point out that the FCC is presently collecting from applicants for radio licenses fees that are used to offset costs to the government for processing applications. Accordingly, it seems excessive to authorize the FCC to collect a second fee in the event a license holder should transfer his license to another. At the time the processing fee legislation was enacted, AAR did not oppose it and even supported the FCC in its later rulemaking actions to implement the collection of those fees. The present fee enhances the radio communication licensing process and applicants receive a useful service from the FCC in return for their fee payment. The additional fee, i.e., transfer fee, does nothing to increase the efficiency of spectrum management and does not add new resources for the FCC to better perform its important role.

In conclusion, AAR urges the Committee and the Congress to oppose the use of auctions or any similar approach as the primary tool in the FCC spectrum management process. Even the limited use of auctions, as proposed by the Assistant Secretary of Commerce during the recent hearing, should be opposed as bad public policy. Likewise, the imposition of a transfer fee, as proposed in S. 1935, should be rejected because its purpose is not to improve spectrum management or otherwise enhance the efficient use of the valuable radio frequencies resources of our country.

Should you, any member of the Committee, or any member of the Committee staff have questions, please do not hesitate to call on us.

Sincerely,

W. H. Dempsey

BLACKBURN&COMPANY
INCORPORATED
Media Brokers & Appraisers Since 1947

May 10, 1988

VIA MESSENGER

The Honorable Daniel K. Inouye
Chairman
Communications Subcommittee
Senate Committee on Commerce, Science & Transportation
722 Senate Hart Office Building
Washington, DC 20510

Dear Senator Inouye:

Since 1947, Blackburn & Company, Incorporated has brokered the sale of over 2,500 radio and television stations. In this time we have come to know the intimate business feelings of the vast majority of station owners. We have watched this industry evolve from its infancy into the greatest free communications system in the world. Certainly, it is also one of our country's greatest assets.

Knowing the minds of broadcasters over these years, we think we have also seen the positive and negative effects of the various controls and actions our government has applied to this industry over the years. It is from our position of deep involvement with the broadcasting community that we oppose S. 1935, the Communications Transfer Fee Act of 1987.

One reason our system is the strongest and the best is that it has been able to attract capital and entrepreneurs willing to experiment. We believe this transfer tax is widely viewed by the broadcasting and financial community as discriminatory and punitive and will have the undesirable effect of retarding the industry's growth and development.

Also, on the purely practical side, since all businesses move in cycles, it may now be true that this industry's restructuring, accompanied by many transfers, may have peaked. Adding a transfer tax of between 2 and 4 percent to future transfers may simply eliminate the feasibility of many and probably cause a true hardship in certain cases.

We know from our position over these years that broadcasters have a built-in incentive to invest in their communities and that such a tax would have a direct and negative impact on this investment.

Respectfully submitted,

James W. Blackburn, Jr.

James W. Blackburn, Jr.
President

JWB,Jr./gf
cc: All Communications Subcommittee Members

1100 Connecticut Avenue, N.W., Suite 420, Washington, D.C. 20036 Telephone: (202) 331-9270 Fax: (202) 331-9685
Washington, D.C. • Atlanta • Chicago • Beverly Hills

National Association of
NAB
BROADCASTERS

Edward O. Fritts

President & CEO
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5444
Telex: 350-085

May 16, 1988

The Honorable Daniel Inouye
United States Senate
Room 722
Senate Hart Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On April 27, during the Communications Subcommittee hearing on S. 1935, the Communications Transfer Fee Act, you asked me how many members of the broadcasting industry had gone bankrupt. I responded:

> "Thirty-five AM stations were either in bankruptcy or financial distress sales, 15 FM stations, 18 AM/FM operations, seven television stations were bankrupt or financially distressed, 59 additional stations were thought to be in trouble when they were sold."

This answer is incomplete. It applies only to those stations that were transferred in 1985 through 1987. The statistics for all stations show that many more stations are bankrupt or losing money. For example, in addition to the transferred stations I noted, 20 independent television stations were under bankruptcy protection by the end of 1987. Information on radio bankruptcies is more difficult to obtain. However, we do know from our most recent survey that more than half of the fulltime AM radio stations surveyed lost money in 1986. Of these stations that lost money, half lost in excess of $111,000.

As I noted in my testimony, many television stations that are not in bankruptcy still face financial difficulties. In our most recent survey, nearly half of the independent stations surveyed lost in excess of $1 million.

Thus, it is clear that Fred Friendly's assertion -- "the average commercial station, the successful ones, and they are all successful, make 40 to 60 percent (profits)" -- is patently absurd. Support for this proposal should not be premised on the erroneous assumption that it would have but a minor impact on broadcasters, all of whom are making money hand over fist.

Mr. Friendly made one other remark to which I also would like to respond. He stated, in reference to the transfer fee and trust fund proposal of S. 1935, that "I hope nobody ever says that there is anything in the First Amendment that would prevent this kind of arrangement from being made."

The fact is that adoption of this proposal would have serious First Amendment and Fifth Amendment implications, which the Subcommittee should consider. This transfer tax would single out electronic communications media, in particular the broadcast media, from all other media. This differential treatment of the electronic communications media is presumptively unconstitutional unless it can be shown that there is a compelling governmental interest which otherwise cannot be achieved.

The record clearly demonstrates that this is not the case, as alternative means of funding public broadcasting are available. These constitutional issues are even more clearly drawn, if that can be, because of the additional tax placed on transfers of stations held less than three years. See Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. ___, 95 L.Ed.2d 209 (1987); Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575, 75 L.Ed.2d 295 (1983).

On behalf of NAB, I appreciate your consideration of these clarifications, and I respectfully request that you include the text of this letter in the hearing record on S. 1935.

Sincerely,

Edward O. Fritts